

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CLEVELAND, OHIO

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IN RE: : Case No. 1:17-md-2804
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OPIATE LITIGATION :
: **VOLUME 3**
TRACK THREE CASES :
: (Pages 510 - 737)
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: Thursday, May 12, 2022
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TRANSCRIPT OF PHASE II ABATEMENT BENCH TRIAL PROCEEDINGS
HELD BEFORE THE HONORABLE DAN AARON POLSTER
SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Susan Trischan, RMR, FCRR, CRR, CRC
United States District Court
Northern District of Ohio
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113

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24
25

1 THURSDAY, MAY 12, 2022, 10:10 A.M.

2 THE COURT: Good morning. Please be
3 seated.

10:11:02

4 All right. Glad the technical problems are
5 fixed.

6 And, Doctor, I just want to remind you
7 you're still under oath from yesterday.

8 THE WITNESS: Of course.

10:11:13

9 MR. LANIER: Your Honor, did you say be
10 seated?

11 THE COURT: Yes. Oh, yes.

12 MR. LANIER: I didn't hear it and I wasn't
13 going to do it.

10:11:20

14 THE COURT: Oh, no. Absolutely. Sorry,
15 Mr. Lanier.

16 All right. Mr. Delinsky, you may continue
17 your cross-examination.

18 MR. DELINSKY: Thank you, Your Honor.

19 CROSS-EXAMINATION OF G. CALEB ALEXANDER (RESUMED)

10:11:28

20 BY MR. DELINSKY:

21 Q. Good morning, Dr. Alexander.

22 A. Good morning.

23 Q. Didn't talk to anyone about your testimony
24 overnight, correct?

10:11:36

25 A. No. No, counsel. No.

1 Q. Okay. Let's stay with the redress a moment. We're
2 going to move to a different part. Okay?

3 A. Okay.

10:11:48

4 Q. And so let's just get the exhibit numbers in for
5 the record, and we're going to start with Lake County.

6 P 23105A. Do you have that?

7 A. Yes, I do.

8 Q. Okay. And let's go to Page 29. Okay? And again,
9 we're looking in the bottom right, right-hand numbers.

10:12:06

10 Tell me, are you there?

11 A. Did you say Page 29?

12 Q. Page 29. And just for your reference, we're at
13 Section 3 B on the criminal justice system.

14 A. Yes, I see that.

10:12:24

15 Q. Okay. You're with me?

16 A. Yes.

17 Q. All right. Let me state the obvious and make sure
18 I have this right.

19 This, this page of your redress model

10:12:37

20 addresses the subcategory of your abatement plan on the
21 criminal justice system, correct?

22 A. Yes. It does.

23 Q. Okay. And one item within this subcategory is
24 Opioid Drug Courts, correct?

10:12:54

25 A. Yes.

1 Q. Okay. And we can see Item Number 1 in Line 1
2 concerns Opioid Drug Courts, correct?

3 A. Yes.

4 Q. And for each year from 2021 through 2035, you have
10:13:17 5 an estimated number of Opioid Drug Court participants,
6 correct?

7 A. Yes.

8 Q. Okay. And you provide the same analysis for -- in
9 your Trumbull County redress model, correct?

10:13:32 10 A. Similar, although using information relevant to
11 Trumbull County rather than Lake County.

12 Q. Okay. So different estimates, but nevertheless,
13 for Trumbull County, you provide estimates of the number
14 of Opioid Drug Court participants from 2021 through 2035
10:13:52 15 on an annual basis?

16 A. Yes, I do.

17 Q. Okay. Now, can we go down to the note?

18 A. Okay.

19 Q. And Note 1 in particular.

10:14:07 20 And the -- in that note, and, here, I'm
21 going to put it up on the Elmo so everyone can see what
22 I'm talking about.

23 Thank you, Mr. Pitts.

24 Are you with me in this Note 1 here? Let
10:14:36 25 me highlight it.

1 Do you see that?

2 A. Yes.

3 Q. Okay. And then you have input 34, and that
4 indicates the number of Lake County Treatment Court
10:14:47 5 participants that report heroin or prescription opioids
6 as their primary drug of choice.

7 Correct?

8 A. Yes.

9 Q. Okay.

10:14:57 10 So 34 is the number of Lake County
11 Treatment Court participants that report heroin or
12 prescription drugs as their drug of choice?

13 Correct?

14 A. Yes.

10:15:07 15 Q. Okay. In year one of your plan, you provide for 54
16 Drug Court participants, correct?

17 A. Yes.

18 Q. In year two, you estimate 87 Drug Court
19 participants, correct?

10:15:32 20 A. Yes.

21 Q. But the actual number of Drug Court participants
22 that you report is 34, correct?

23 A. Yes.

24 Q. In year five, so that would be indicated here as
10:15:50 25 year 2025, you report 168 Opioid Drug Court participants,

1 correct?

2 A. Yes.

3 Q. But again, the actual number of Drug Court
4 participants that you report here is 34, correct?

10:16:07 5 A. Yes.

6 In -- yes, I believe that's using 2016
7 data, but, yes, that's correct.

8 Q. So you are projecting increases in the number of
9 Opioid Drug Court participants in Lake County, correct?

10:16:29 10 A. Yes. That's right.

11 While simultaneously taking into account
12 reductions in the overall levels of morbidity and
13 mortality from opioids in the community as reflected by
14 the trend ratio as input four.

10:16:45 15 Q. So let's look at year five of your plan where you
16 project 168 Opioid Drug Court participants.

17 That would reflect a roughly five
18 time -- times multiplier over the actual number of Opioid
19 Drug Court participants per year that you identify in
20 Line -- in Note 1, correct?

10:17:12

21 A. That's right.

22 Q. Okay. Now, if we go down within Note 1, you have
23 two other lines.

24 One says, "Opioid Drug Courts capacity
25 growth years one to three."

10:17:36

1 Do you see that?

2 A. Yes.

3 Q. And you say, you predict a 60% growth per annum,
4 right?

10:17:46 5 A. Well, that -- that's a -- again, this is harkens to
6 our conversation yesterday. That's a target, so that's a
7 recommendation, and it's based on the premise which I
8 think is supported by a large amount of data that Drug
9 Courts are underutilized and that far too many
10:18:03 10 individuals with Opioid Use Disorder that might otherwise
11 be eligible for Drug Courts are instead being channeled
12 through the sort of standard court pathway and ending up
13 incarcerated rather than treated.

14 Q. I understand that.

10:18:20 15 And because that's a recommendation, you
16 don't cite any data to support that projection, correct?

17 A. Well, it's a recommendation for the community, but
18 there's a nontrivial amount of data, including from
19 federal sources and reports ranging from those
10:18:40 20 commissioned by the last administration to, you know, to
21 nonprofit and public health agencies and organizations
22 and the like, supporting the assertion that we need to do
23 a far better job of channelling individuals to Drug
24 Courts rather than the standard dockets by which they're
10:19:01 25 managed.

1 Q. In this line of your redress model, you cite no
2 data to support a 60 percent increase in Opioid Drug
3 Court participation, correct?

4 A. Well, it's a recommendation, but based on expert
10:19:17 5 opinion.

6 Q. And you cite no data to support it in this line?

7 A. That's correct. That's correct.

8 Q. You cite no studies to support it in this line?

9 A. Again, it's my recommendation.

10:19:31 10 And -- but I don't provide, you know, I
11 would point to the other references within my report and
12 within this spreadsheet to support the general assertion
13 that Drug Courts are underutilized to a significant
14 degree.

10:19:49 15 Q. And when you say it's your recommendation, so the
16 record's clear, it's your target, correct?

17 A. That's correct.

18 Q. Okay. What you do cite here is your expert
19 opinion, correct?

10:20:02 20 A. Well, mine and others.

21 Q. Okay. And to the extent you're citing others'
22 expert opinions here, you don't identify whose opinion
23 they are, correct?

24 A. No, I'd be happy to provide those for the Court,
10:20:17 25 but I do not.

1 Q. Okay. Now, the line below that, you talk about
2 Opioid Drug Court capacity growth years four to 15,
3 correct?

4 A. Yes.

10:20:27 5 Q. And in those years, the rate of increase drops from
6 60 percent to 10 percent, correct?

7 A. Yes.

8 So this is a good example of my effort to
9 scale more aggressively during the early years of the
10:20:41 10 abatement program and then to back off during the out
11 years, if you will.

12 Q. And this 10 percent figure is a recommendation -- a
13 recommended target as well, correct?

14 A. That's correct.

10:20:51 15 Q. Okay. And as with the line on top of it regarding
16 years one, two, three in this line, you don't cite any
17 data to support the 10 percent increase, correct?

18 A. That's correct.

19 I would point to elsewhere in my report, as
10:21:09 20 well as the spreadsheet for supporting scientific
21 information.

22 Q. You don't support any study -- you don't cite any
23 studies in this line supporting a 10 percent per annum
24 increase in Opioid Drug Court participation, do you?

10:21:24 25 A. No. I do not.

1 Q. And you again, you cite expert opinion, correct?

2 A. Yes. That's correct.

3 Q. And there are no citations for that expert opinion,
4 correct?

10:21:34 5 A. That -- that's correct.

6 I haven't named individuals, but again, I
7 would be happy to do so if that's helpful.

8 Q. But it's not here in this document, correct?

9 A. Correct.

10:21:44 10 Q. Okay. I want to -- let's turn to the previous
11 page, Dr. Alexander. And again, we're in the Lake County
12 redress model.

13 Oh, actually, before we move to that, let's
14 just do some quick housekeeping on what I just asked you
10:22:07 15 about.

16 Can you pull the Trumbull County redress
17 model at P 23105B?

18 A. Yes.

19 Q. And can you please turn to Page 28?

10:22:24 20 A. Okay.

21 Q. Okay.

22 And in Note 1 in the Trumbull County
23 redress model, you provide the same 60, 60 percent
24 projected or recommended increase for years one through
10:22:44 25 three in Opioid Drug Courts in Trumbull County, correct?

1 A. Yes.

2 Q. You provide -- you recommend the same 10 percent
3 increase in Opioid Drug Court participation in years four
4 through 15, correct?

10:22:57 5 A. Yes, I do.

6 Q. And you source those recommended targets in the
7 same fashion, correct?

8 A. I do.

9 Q. Okay. All right. Let's go back to Lake County.

10:23:11 10 Correct? You don't have to correct that.

11 Let's go back to Lake County.

12 All right. So we're in now P 23105A,
13 right?

14 A. Yes.

10:23:23 15 Q. This is the Lake County redress model again,
16 correct?

17 A. Yes.

18 Q. And can you turn to Page 28?

19 A. Okay.

10:23:39 20 Q. Okay. And Page 28 reflects your estimates
21 regarding the subcategory of your abatement plan on
22 public safety, correct?

23 A. Yes. Again, supplemented by my report, which
24 discusses the rationale and scientific evidence for this
10:24:02 25 category in further detail.

1 Q. And we are now in subcategory 3 A of your Lake
2 County redress model, correct?

3 A. Yes.

4 Q. I'm going to put this on the screen again. Item
10:24:23 5 Number 1 is Law Enforcement Assisted Diversion, correct?

6 A. Yes.

7 Q. These are programs to get people who come into the
8 criminal justice system diverted to treatment to the
9 extent they've OUD, correct?

10:24:42 10 A. Yes. To identify people and in some sense preempt
11 entry into the criminal justice system by allowing for
12 individuals, for example, that might be found having
13 overdosed to be diverted to treatment, yes.

14 Q. Okay. And then in Line 1, you estimate -- and by
10:25:03 15 the way, you -- just, there's an acronym here. You call
16 these Law Enforcement Assisted Diversion programs LEAD,
17 L-E-A-D all caps, right?

18 A. Yes.

19 Q. Okay. And then in the line designated Line Number
10:25:20 20 1, you say the total number of Law Enforcement Assisted
21 Diversion programs to be established for police
22 departments, correct?

23 A. Yes.

24 Q. And you predict that -- that a LEAD program should
10:25:39 25 be established for every 4.8 police departments in Lake

1 County, correct?

2 A. Not -- not exactly.

3 I recommend that 4.8 programs be developed,
4 and this is based on an estimation that four police
10:26:01 5 departments can share a LEAD program.

6 Q. Okay. So this is a recommendation?

7 A. Correct.

8 Q. Okay. I see.

9 And when we get down to Note 1 that
10:26:17 10 corresponds to Line 1, you indicate that the source for
11 this recommendation again is expert opinion, correct?

12 A. Yes.

13 Q. And on this line, you don't cite any studies for
14 that recommended figure, correct?

10:26:37 15 A. That's correct.

16 Q. You only cite expert opinion, correct?

17 A. Yes.

18 Q. Okay. And if we looked at the Trumbull County
19 redress model, it would be the exact same in this regard,
10:26:52 20 correct?

21 The number might be different, but the
22 citations in support would be the same?

23 A. I believe that's true, yes.

24 Q. Okay. Let's go to Page 32.

10:27:19 25 Okay. Here on Page 32, we're in the

1 subcategory of your redress model for Lake County
2 concerning mental health counseling and grief support,
3 correct?

4 A. Yes.

10:27:33 5 Q. This is subcategory 3D of your Lake County redress
6 model?

7 A. Yes, it is.

8 Q. And it's subcategory 3D of your Trumbull County
9 redress model as well, correct?

10:27:45 10 A. Yes.

11 Q. And this section obviously concerns mental health
12 counseling and grief support?

13 A. Yes.

14 Q. In Line 6, you talk about mental health counselors,
10:28:01 15 right?

16 A. Yes.

17 Q. And you provide the total number of counselors
18 needed to deliver mental health and grief support,
19 correct?

10:28:15 20 A. Yes.

21 Q. And you provide a number of counselors needed to
22 deliver mental health and grief support on a -- for every
23 year in Lake County from 2021 to 2035, correct?

24 A. That's correct. Taking into account, again, the
10:28:33 25 decreasing level of, you know, the receding waters of the

1 epidemic over time through the inclusion of the trend
2 ratio that I applied.

3 Q. And you estimate that the Lake County should have a
4 little more than six counselors to deliver mental health
10:29:00 5 and grief support, correct?

6 A. That's right.

7 Q. Okay.

8 Now, if we go down to Note 6, okay, you say
9 that you -- Note 6, of course, corresponds to the line we
10:29:22 10 were just talking about on the total number of counselors
11 needed to deliver mental health and grief support,
12 correct?

13 A. Yes.

14 Q. Okay. And in Note 6, you say the number -- you
10:29:32 15 estimate that a counselor will meet with six patients per
16 day, correct?

17 A. Yes.

18 Q. For 250 work days, correct?

19 A. Yes.

10:29:47 20 Q. You estimate one session per month, correct?

21 A. Yes. Conservatively.

22 Q. And you source that with expert opinion again,
23 correct?

24 A. Yes.

10:29:58 25 As in the other cases, there was never an

1 instance where I had what I felt was a valuable published
2 scientific analysis that I excluded and instead just
3 provided expert opinion.

4 So these are settings where I worked with
10:30:18 5 colleagues who are experts in the field, and considered a
6 variety of inputs, including the expertise and
7 recommendations of local experts on the ground in the
8 communities to make the recommendations that I've made.

9 Q. All that's cited here is expert opinion, correct?

10:30:33 10 A. That's correct.

11 Q. You don't break out what experts you talked to,
12 correct?

13 A. Again, I think I may have articulated that during
14 deposition, but I don't in this instance describe the
10:30:47 15 names nor the training of the individuals that I spoke
16 with.

17 Q. Okay. We can't glean that from this line of the
18 redress model, correct?

19 A. That's correct.

10:30:56 20 Q. Okay.

21 And on the subject of your discussions with
22 people in the county, we discussed yesterday that you
23 spoke with Ms. Caraway and Ms. Thorpe from Trumbull
24 County, correct?

10:31:11 25 A. Yes.

1 Q. And you spoke with Ms. Fraser from Lake County,
2 correct?

3 A. Correct.

10:31:19

4 Q. You didn't speak with anybody else from the
5 counties, correct?

6 A. That -- that's correct, although I reviewed a
7 significant volume of work reflecting the voices of
8 individuals in the county, but I didn't have personal
9 discussions with others from the county.

10:31:33

10 Q. Am I right that you spoke with Ms. Fraser for
11 approximately 45 minutes?

12 A. That sounds about right.

13 Q. And am I right that you spoke with Ms. Thorpe and
14 Ms. Caraway for about the same amount of time?

10:31:46

15 A. That sounds about right.

16 Q. About 45 minutes?

17 A. Yes.

18 Q. Okay. All right. Let's turn to subcategory 2A of
19 your redress model. Okay?

10:32:01

20 That's on Page 12.

21 Are you there?

22 A. Yes, I am.

23 Q. Okay. This page of the Lake County redress model
24 concerns connecting individuals to care, correct?

10:32:34

25 A. Yes.

1 Q. It's subcategory 2A of your abatement plan,
2 correct?

3 A. Yes.

10:32:46

4 Q. And the Trumbull County redress model contains a
5 comparable Section 2A regarding connecting individuals to
6 care, correct?

7 A. Yes, it does.

8 Q. Okay. One element within this subcategory is
9 transportation assistance, correct?

10:33:03

10 A. Yes.

11 Q. And just so the record's clear, transportation
12 assistance would entail helping people who don't have
13 means or methods of transportation to get from their home
14 or workplace to outpatient treatment, correct?

10:33:20

15 A. Yes. So I suppose in terms of outpatient
16 treatment, but, yes, it's to help, help people get to
17 where they need to go so they can get care.

18 Q. Okay. Now, your redress model that we're looking
19 at here does not specify how transportation assistance
20 should be provided by Lake County, correct?

10:33:52

21 A. Are you referring to, for example, whether buses or
22 taxis or ride share or something like that?

23 Q. Correct. I'm referring to the logistics of how
24 this assistance actually should be implemented.

10:34:11

25 A. Correct. I don't provide that level of detail in

1 my models.

2 Q. Okay.

3 Now, in fairness, in your report, you do
4 talk about options, like vouchers?

10:34:24 5 I think you talk about some others, too.

6 Vouchers, taxi reimbursement, and gas
7 cards, correct?

8 A. Yes.

9 Q. And that's for the county to consider, correct?

10:34:37 10 A. Yes. That's a great example where my report may
11 valuably supplement the information that's in these Excel
12 sheets.

13 Q. But in these Excel sheets, you are not identifying,
14 by way of example, who should oversee the transportation
10:34:53 15 assistance program in Lake County, correct?

16 A. Well, I don't know if I entirely agree because I do
17 consider supervision and evaluation and leadership of the
18 abatement program, and that would include the
19 transportation framework.

10:35:09 20 Q. Correct.

21 But even in the section of your abatement
22 plan regarding leadership to which you just referred, you
23 don't identify who the leader should be?

24 A. That's true.

10:35:22 25 Q. And here with regard to transportation, you are not

1 identifying the individual within Lake County or
2 individuals who should administer and implement this
3 plan, correct?

4 A. That's correct.

10:35:34 5 Q. Okay. And you're not specifying the agencies or
6 organizations that should provide these services,
7 correct?

8 A. That's correct.

9 I speak to that broadly, as you pointed
10:35:48 10 out, in my report. But not -- not beyond that level of
11 detail.

12 Q. Okay. You leave the logistics of implementing this
13 program, the transportation -- transportation assistance
14 program, to the discretion of counties, correct?

10:36:03 15 A. Yes, the counties and their varied stakeholders.

16 Q. Okay.

17 So the who, what, when, where of how to
18 assist people with transportation is, you delegate to the
19 discretion of the counties, correct?

10:36:18 20 A. Well, the counties and the courts, I suppose.

21 Q. Okay. You leave the method of providing
22 transportation assistance to the counties and the Court?

23 A. Yes.

24 Q. Okay.

10:36:30 25 And generally, if we look across your whole

1 abatement plan and the entirety of your redress models,
2 that's the approach, correct?

3 A. Yes.

4 Q. Okay.

10:36:39 5 So the approach is you outline resources
6 needed for one program or another, but you leave it to
7 the counties to work out the logistics of how they'll be
8 delivered, correct?

9 A. Yes. The counties and the courts.

10:36:58 10 Q. Okay. Your abatement plans do not send -- descend
11 to the logistics of implementing the programs in your
12 abatement plan, correct?

13 A. I'm sorry, did you say "descend"?

14 Q. That's a lawyer word. I'm sorry.

10:37:13 15 A. Okay.

16 Q. I'm sorry.

17 Your abatement plan does not provide the
18 logistics of how the programs in the plan are to be
19 implemented and who should implement them and where they
10:37:26 20 should be implemented.

21 Correct?

22 A. That's correct.

23 Q. Okay. And the means and methods of implementing
24 your abatement plan are not contained in your plan
10:37:40 25 because they're subject to each county and to the Court?

1 A. Well, I identify programs and services and the
2 volume of such. I provide the scientific evidence base
3 to support these estimates. I project them over time,
4 and I include in my plan the vital issue of supervision
10:38:04 5 and leadership and stewardship of these resources.

6 I don't go further than that.

7 Q. Okay. So the ground level, grass roots means and
8 methods of implementing the programs in your plan are to
9 be determined by the counties and perhaps the Court,
10:38:28 10 correct?

11 A. Yes.

12 I mean, if you're talking about something
13 at the level of, you know, should we add seven treatment
14 beds in this Building A or should we build a new
10:38:40 15 treatment building, Building B, that level of detail I do
16 not provide.

17 Q. And likewise, who should provide the treatment,
18 correct?

19 Your abatement plan doesn't provide that?

10:38:51 20 A. Well, I do enumerate a number of very dire
21 workforce issues that I think have to be addressed, and
22 that includes specifying specific disciplines where I
23 think hiring is needed and the like. But I don't -- I
24 don't go on to say that, you know, this treatment
10:39:10 25 provider should pick up seven extra patients and that

1 treatment provider should pick up 10.

2 Q. That's up to the counties, correct?

3 A. The counties and the Courts.

4 Q. Okay. All right. Let's go back to Row 3.

10:39:25 5 And Row 3 sets out the total number of
6 patients in need of transportation assistance for
7 outpatient OUD treatment.

8 Right?

9 A. Yes.

10:39:38 10 Q. And let's just take some sample years.

11 In year one -- I'm calling it year one. I
12 think you probably understand why, Dr. Alexander. I'm
13 just trying to avoid the awkwardness of the timing
14 disparity that's no one's fault, certainly not yours.
10:39:53 15 Okay?

16 So year one you understand to be 2021 in
17 this document, right?

18 A. Yes, I do.

19 Q. Okay. So in year one, you propose 388 persons will
10:40:06 20 be in need of transportation assistance, correct?

21 A. Yes.

22 Q. Okay. Let's just go to 2024; 454, right?

23 A. Yes.

24 Q. If we go to 2025, that's year five of the plan, 474
10:40:23 25 patients in need of transportation assistance for OUD

1 treatment, right?

2 A. Yes.

3 Q. Okay. Now, let's turn the page. Okay?

4 If we turn the page, we go back to

10:40:41 5 treatment, right? The page on treatment that we spent
6 some time with yesterday afternoon.

7 You remember that, right?

8 A. Yes.

9 Q. Oh, I'm sorry. I was wrong in saying turn the
10:40:52 10 page. It's a few pages.

11 Go to Page 15 of the Lake County redress
12 model.

13 A. Okay.

14 Q. That's up on the screen right now, Section 2B,
10:41:08 15 right?

16 A. Yes.

17 Q. And in Section 2B, you set forth numbers of the
18 total number of individuals with OUD in treatment
19 to -- oh, I'm sorry -- I'm out -- highlighting the wrong
10:41:24 20 line.

21 Go down to Line 9, total number of
22 individuals with OUD in outpatient treatment settings.

23 Correct?

24 A. Yes.

10:41:33 25 Q. Do you see that line?

1 And let's see if this works, if we can see
2 everything on this screen. I think maybe we can.

3 So in year one of your plan, the total
4 number of individuals with OUD in outpatient treatment
10:41:50 5 settings is 388, correct?

6 A. Yes.

7 Q. That's the same number as the patients in need of
8 transportation assistance, correct?

9 A. Yes.

10:42:02 10 Q. And then if we go to year 2024, just by way of
11 example, it's 454 patients in outpatient treatment
12 settings, correct?

13 A. Yes.

14 Q. And that's the same number of patients who are
10:42:16 15 listed as in need of transportation assistance, correct?

16 A. Yes.

17 If --

18 Q. Well, let's just finish.

19 And if we go to 2025, that's year five of
10:42:27 20 the plan, we have the same phenomenon where the number of
21 individuals with -- receiving treatment in outpatient
22 treatment setting is the same as the total number of
23 patients in need for transportation assistance.

24 Correct?

10:42:41 25 A. Yes.

1 And if you look at input four on Page 13 of
2 this exhibit, I make an assumption of one voucher per
3 week for each of these individuals.

4 There may well be some of these individuals
10:42:58 5 that have a car. There may be some that have two. But
6 there may also be some that need three vouchers a week or
7 five vouchers a week rather than just one.

8 And so I assume conservatively one voucher
9 per week and use the entire outpatient OUD population to
10:43:20 10 estimate the total number of vouchers needed.

11 But this is a population level estimate.

12 Q. Let's break that down.

13 Many patients in need of outpatient OUD
14 treatment will have cars, correct?

10:43:39 15 A. Some. Some may. Some will, absolutely.

16 Q. They will have access to family members or friends
17 who will have automobiles?

18 A. Some may, and some will not.

19 Q. Others may have means of using Uber or taxis,
10:43:59 20 correct?

21 A. Some -- again, some may and some may not.

22 And treatment, transportation is a
23 consistently identified major barrier to treatment access
24 in many, many settings, including in these -- in these
10:44:17 25 specific counties.

1 Q. Some may have access to public transportation,
2 correct?

3 A. Again, I mean, there's not -- you know, this isn't
4 New York City, so the public transportation
10:44:33 5 infrastructure in these counties is not as well developed
6 as in many parts of the United States.

7 And again, transportation or lack thereof
8 is consistently identified as a major treatment barrier
9 for many individuals with Opioid Use Disorder, including
10:44:50 10 in these two counties.

11 Q. Some may have access to public transportation, some
12 may not?

13 A. That's correct.

14 Q. Okay. And you haven't looked at any data in the
10:45:05 15 counties on who -- to quantify the some who may need
16 assistance and the some who may not need assistance,
17 correct?

18 A. I've reviewed data specific to the counties
19 identifying transportation as an important barrier, but
10:45:23 20 I've not reviewed individual level data from the counties
21 indicating, you know, how many households report
22 transportation problems.

23 Q. Okay.

24 Now, if you go to Note 3, that corresponds
10:45:41 25 to Line 3 on the total number of patients in need of

1 transportation assistance?

2 Do you see where I am?

3 A. Yes.

4 Q. You state as your source, "Retrieved From Tab 2B
10:46:11 5 OUD Treatment."

6 Correct?

7 A. Yes. That's correct.

8 Q. Okay. And that's the input that we just looked at
9 from subcategory 2B, correct?

10:46:18 10 A. Yes.

11 Q. You provide no other source corresponding to Line 3
12 for your estimate of the number of individuals with OUD
13 in outpatient treatment settings who need transportation
14 assistance, correct?

10:46:38 15 A. That's correct.

16 Q. Okay. You provided a similar redress model in the
17 State of Rhode Island, correct?

18 A. Yes.

19 Q. Okay. Bear with me for one sec, Dr. Alexander.

10:47:06 20 I just want to make sure I don't lose my
21 papers.

22 Paul, 21.

23 Dr. Alexander, you've been handed CVS MDL
24 5004, correct?

10:47:41 25 A. Yes.

1 Q. Okay. And this is a copy of the redress model you
2 provided on behalf of the State of Rhode Island in its
3 opioid litigation against drug manufacturers and
4 wholesale distributors, correct?

10:47:57

5 A. Yes.

6 Q. And this redress model for Rhode Island follows
7 form with the redress models for Lake and Trumbull
8 County, correct?

9 A. Yes. Similar. Not identical.

10:48:18

10 Q. Okay. It is titled, "State of Rhode Island Opioid
11 Epidemic Abatement Estimates," correct?

12 A. Yes. June 1st, 2021.

13 Q. Okay. It has the same four categories of abatement
14 at the high level. And by that, I'm referring to
15 categories one through four, correct?

10:48:37

16 A. Yes.

17 Q. Okay. And for the most part, although there's some
18 deviation, the -- all of the subcategories in the Rhode
19 Island abatement plan are the same as in the Lake County
20 and Trumbull County abatement plans, correct?

10:48:57

21 A. Yes.

22 Q. Okay. Let's go to Page 11 of the Rhode Island
23 redress model.

24 And this is -- Page 11 is the comparable
25 page -- well, strike that.

10:49:21

1 Page 11 is the page of your Rhode Island
2 redress model that corresponds to the connecting
3 individuals to care page from the Lake County redress
4 model that we were just looking at, correct?

10:49:40 5 A. Yes.

6 Q. Okay. And if you go to Line -- sort of Item 3 is
7 transportation assistance, correct?

8 A. Yes.

9 Q. Line 4 is the total number of patients in need of
10:50:00 10 transportation assistance for -- oh, no. No. I'm sorry.

11 Line 3 is the total number of patients
12 eligible to receive transportation assistance for
13 outpatient treatment, right?

14 A. Yes.

10:50:20 15 Q. And that's 2,037, right?

16 A. Yes.

17 Q. Okay. 2,037 for year one of that plan, which is
18 2022, right?

19 A. Yes.

10:50:34 20 Q. Okay.

21 Now, can you hold that number, 2,037?

22 A. Yes.

23 Q. If we go to Section 2B of your plan -- oh, I see.
24 I see. You do the same thing in the Rhode Island model,
10:51:08 25 correct?

1 A. Yes.

2 Q. Okay. I got you. I got you.

3 MR. WEINBERGER: Well, can we have the
4 record reflect that it's the same number? You said the
10:51:18 5 same thing. It's the same number.

6 MR. DELINSKY: Yes. Same number. That's
7 good. That's good.

8 BY MR. DELINSKY:

9 Q. All right. There's a page in your redress models
10:51:31 10 on -- in the special populations on NAS babies, correct?

11 A. In which redress model are you referring to?

12 Q. Oh, I'm sorry. I'm back to Lake and Trumbull
13 County redress models.

14 MR. LANIER: Are we done with this one?

10:51:50 15 MR. DELINSKY: We're done, Mark.

16 BY MR. DELINSKY:

17 Q. So let's go back to P 23105A and P 23105B.

18 A. Okay.

19 Q. Okay. Are you with me?

10:52:01 20 A. Yes.

21 Q. Okay.

22 In Section 4C of each plan, you
23 address -- you have some provisions for NAS babies,
24 correct?

10:52:16 25 A. No. I think that's Section 4A.

1 Q. Ah-ha. Thank you. Section 4A, both for Lake
2 County and Trumbull County?

3 A. Yes.

4 Q. Okay.

10:52:26 5 I just want to just confirm for the record
6 that your plan doesn't include and is not based on any
7 figures or estimates provided by Nancy Young, who
8 testified yesterday, correct?

9 A. Well, I have spoken with Dr. Young and members of
10:52:48 10 my team have spoken with members of her team. So without
11 looking at specific inputs, I guess I wouldn't want
12 to -- it would be helpful to look at specific inputs.

13 If you have specific questions about them.

14 Q. Well, let's -- let's go to Section 4A of your plan.
10:53:09 15 Okay?

16 And look at Lake County. So I believe
17 we're on Page 33, if I'm not wrong.

18 Right?

19 A. Yes.

10:53:19 20 Q. Okay.

21 And I believe that it's Item 4 where your
22 plan speaks to NAS babies, correct?

23 A. Yes.

24 Q. And Item 4 is populated with Line 6 through 12,
10:53:55 25 correct?

1 A. Yes.

2 Q. And those appear on the following page of your
3 report, correct?

4 A. Yes.

10:54:00 5 Q. Okay. So we have six, seven, eight, nine, 10, 11,
6 12.

7 Now, some of those notes refer back to
8 previous notes, correct?

9 A. I'm sorry. You said some of those notes refer to
10:54:17 10 what?

11 Q. Previous notes, like Number 6, for instance,
12 involves a computation that involves Note 1, right?

13 A. Yes.

14 Q. Okay.

10:54:26 15 Now, just take a look there. And I really
16 don't mean this to be an ordeal but your -- the sourcing
17 for your estimates here are not based on any estimates
18 provided by Ms. Young, correct?

19 A. They're based on the sources that I depict here.

10:54:43 20 That does include expert opinion, and
21 Dr. Young is one of many experts that I've consulted with
22 in the course of preparing this report and others.

23 So I don't know if that addresses your
24 question.

10:55:02 25 Q. Well, you draw estimates here. So, for instance,

1 among -- I am on Page 33 of your report.

2 Total number of children eligible to

3 receive -- let's do an easier one. Okay?

4 The first one, Line 6, total number of

10:55:29 5 infants diagnosed with NAS to receive medical care.

6 Do you see that?

7 A. Yes.

8 Q. Okay. Did you generate that estimate or did you

9 take that estimate from Nancy Young?

10:55:40 10 A. If you go to the next page for input six, I provide

11 the source.

12 And the source is not Dr. Young.

13 It's -- it's information from -- from an Ohio Neonatal

14 Abstinence Syndrome County Report.

10:56:01 15 Q. And likewise, that's not sourced from any estimates

16 made by Dr. Keyes, correct?

17 A. That's correct.

18 Q. And if we were -- okay. Let's take another one of

19 these estimates, number nine.

10:56:15 20 Total number of children eligible to

21 receive early -- let's go to number eight. Total number

22 of children to receive early intervention, age zero to

23 five years old.

24 Okay?

10:56:27 25 A. Yes.

1 Q. If we go to number eight, you provide a percentage
2 there, correct?

3 A. Yes.

10:56:41

4 Q. You do not cite to Nancy Young. You don't identify
5 her, correct?

6 A. The source for number eight is expert opinion.

7 Q. Okay. And the expert opinion isn't spelled out,
8 correct?

9 A. That's correct.

10:56:49

10 Q. Okay. If we go to Line 7, total number of infants
11 exposed to opioids but not diagnosed with NAS, okay?

12 A. Yes.

13 Q. That's Line 7.

14 You do not source that with Nancy Young,
15 correct?

10:57:06

16 A. Yes. That's just a straightforward, you know,
17 calculation.

18 Q. Okay. And you don't source that with Dr. Keyes,
19 correct?

10:57:14

20 A. The -- correct.

21 Q. Okay. Super.

22 All right. We just may be done with the
23 redress model, so thanks for your indulgence through
24 that. Okay?

10:57:39

25 A. Thank you.

1 Q. You agree that there are persons who are addicted
2 to illegal opioids like heroin who have never used
3 prescription opioids, correct?

4 A. Yes, I do.

10:58:00 5 Q. Okay. But you also believe, and you testified
6 yesterday, that there are persons who are addicted to
7 heroin or other illegal opioids as a result of their
8 prior misuse of, or addiction to, prescription opioids,
9 correct?

10:58:20 10 A. Yes.

11 Q. Okay.

12 You cannot identify any particular persons
13 in the counties who progressed to illegal drugs as a
14 result of their prior misuse or addiction to prescription
10:58:39 15 opioids, correct?

16 A. That's -- that's correct.

17 That's not an exercise that I undertook.

18 Q. Correct, because it was outside the scope of your
19 assignment that you were asked to complete. You haven't
10:58:54 20 done work in the counties to try to identify any such
21 persons, if any.

22 Correct?

23 A. Yes. That's correct.

24 Q. Okay.

10:59:05 25 You agree that any persons who may have

1 transitioned from prescription drugs to illegal drugs may
2 not have filled prescriptions at CVS, Walmart or
3 Walgreens?

4 A. Yes, I do.

10:59:26 5 Q. Okay. You agree that any such persons may have
6 obtained prescription opioids from friends or family,
7 correct?

8 A. I mean they -- they may have. They may not have.

9 They may have filled at CVS. They may not
10:59:49 10 have filled at CVS.

11 They may have obtained them from friends
12 and family. They may not have obtained them from friends
13 and family.

14 Q. You don't know one way or the other, correct?

10:59:58 15 A. That's correct.

16 Q. Okay. You have not generated any data on the
17 numbers of persons, if any, in these two counties who
18 progressed to heroin or another illegal opioid as a
19 result of prior misuse of prescription opioids?

11:00:22 20 A. Correct.

21 I didn't do that analysis.

22 Q. And you're aware of no Lake County or Trumbull
23 County-specific data to this effect, correct?

24 A. I'm sorry. Can you repeat that question, please?

11:00:32 25 Q. I'll withdraw it. I'll withdraw it.

1 Now, in your report -- so I'm now talking
2 about your report. I promised you -- sort of promised
3 you. Hopefully I'll live up to it -- that we wouldn't go
4 back to the redress models. Now I'm in your report.

11:00:49 5 Okay?

6 In your report, you cite an article in the
7 *New England Journal of Medicine* by Wilson Compton, Chris
8 Jones and Grant Baldwin, titled, "Relationship Between
9 Nonmedical Prescription-Opioid Use and Heroin Use."

11:01:02 10 Correct?

11 A. Yes.

12 Q. Okay. You're familiar with that article, correct?

13 A. Yes, I am.

14 Q. Okay. Let me first get a copy of that article out.

11:01:27 15 MR. HYNES: Do you want a copy?

16 THE COURT: Okay, thanks.

17 BY MR. DELINSKY:

18 Q. All right.

19 Dr. Alexander, you've been handed what's
11:01:34 20 been marked as CVS MDL 4992, correct?

21 A. Yes.

22 Q. This is an article cited in your report, correct?

23 A. Yes.

24 Q. It's the Compton article that we just discussed,
11:01:48 25 correct?

1 A. Yes.

2 Q. And you obviously have read this article, correct?

3 A. Yes.

4 Q. Okay. I'd like to turn to Page 158 of this

11:01:59 5 article.

6 Okay. I'm going to highlight the language

7 I'm going to ask you about. Okay?

8 "Taken in total, the available data

9 suggests that nonmedical prescription-opioid use is

11:02:32 10 neither necessary nor sufficient for the initiation of

11 heroin use and that other factors are contributing to the

12 increase in the rate of heroin use and related

13 mortality."

14 Do you see that language?

11:02:53 15 A. Yes.

16 Q. Did I read it correctly?

17 A. Yes.

18 Q. Now, this article appears in the *New England*

19 *Journal of Medicine*, correct?

11:03:01 20 A. Yes. 2016.

21 Q. Okay. The *New England Journal of Medicine* is one

22 of the most respected medical journals in the world,

23 correct?

24 A. Yes.

11:03:09 25 Q. You know Chris Jones, one of the co-authors of this

1 article, correct?

2 A. Yes, I do.

3 Q. You have co-authored articles with Chris Jones, the
4 co-author of this article, correct?

11:03:21 5 A. Yes, I have.

6 Q. You know that Mr. Jones has worked for FDA, SAMHSA,
7 and currently works for CDC, correct?

8 A. Yes.

9 Q. You know at the time that Mr. Jones wrote this
11:03:36 10 article, he worked for FDA, correct?

11 A. I'd have to refresh my memory, but that -- that may
12 well be the case.

13 Q. Okay.

14 And if we go to the first page of the
11:03:47 15 article, I think it provides us with this information.

16 It says that CMJ, that's Christopher M. Jones, was with
17 the Food & Drug Administration?

18 Do I have that right?

19 Was with the FDA in Silver Spring,
11:04:13 20 Maryland, correct?

21 A. Okay. Yes.

22 Q. And that refreshes your memory, correct?

23 A. Thank you.

24 Q. Okay.

11:04:22 25 You know that another one of the authors,

1 Wilson Compton -- do you know him, too?

2 A. I do.

3 Q. Okay. So you know he's a public servant as well,
4 correct?

11:04:31 5 A. Yes.

6 Q. He's the Deputy Director of the National Institute
7 on Drug Abuse, correct?

8 A. Yes.

9 Q. Okay. You know the third author, Grant Baldwin,
11:04:40 10 correct?

11 A. I do.

12 Q. Okay. He's a public servant, too, correct?

13 A. Yes.

14 Q. He's at CDC as well, correct?

11:04:46 15 A. Correct.

16 Q. And just so the record's clear, both Mr. Compton --
17 or that's probably Dr. Compton, isn't it?

18 A. Yes. He's an M.D.

19 Q. Yeah. How about, is it Dr. Baldwin, as well?

11:05:01 20 A. I would just refer to -- yes. Sure.

21 Q. Okay.

22 Well, both Compton and Baldwin were working
23 in the Federal Government at the time this article was
24 published, as well as today, correct?

11:05:11 25 A. Yes.

1 Q. Okay.

2 And by the way, with regard to Mr. Baldwin,
3 you know he's currently the Director of the Division of
4 Overdose Prevention at CDC, correct?

11:05:25 5 A. I wasn't aware of that but that sounds quite
6 plausible.

7 Q. Okay. Let's go to Page 160 of the article.

8 And the pages are on the bottom.

9 I'm going to read and show on the screen a
11:05:54 10 line.

11 "Heroin market forces, including increased
12 accessibility, reduced price, and high purity of heroin
13 appear to be major drivers of the recent increases in
14 rates of heroin use."

11:06:11 15 Do you see that language?

16 A. Yes.

17 Q. Did I read it correctly?

18 A. Well, I'm just trying to get the context here.

19 So the first sentence of the previous
11:06:31 20 paragraph discusses the transition from nonmedical use of
21 opioids to heroin, and notes that it appears to be part
22 of the progression of addiction in a subgroup of
23 nonmedical users.

24 And then, as I understand it, the authors
11:06:45 25 go on to -- to examine and speak to whether or not

1 policy-driven reductions in prescription opioids are
2 driving increases in heroin use.

3 And what they're speaking to here, I
4 believe, is to say that in the majority of studies,
11:07:03 5 increases in heroin use preceded the policy-driven
6 reductions in prescription opioid use, and then they, in
7 turn, go on to speak to other forces that appear to fuel
8 heroin markets.

9 Q. Okay. So let's -- let's take this step by step.

11:07:20 10 Okay?

11 A. Yes.

12 Q. So there's a sentence in this article that states,
13 "Alternatively, heroin market forces, including increased
14 accessibility, reduced price, and high purity of heroin
11:07:37 15 appear to be major drivers of the recent increases in
16 rates of heroin use."

17 You see that language, correct?

18 A. I do.

19 Q. And I read it into the record correctly?

11:07:46 20 A. Yes.

21 Q. All right.

22 And you're right that this article notes a
23 correlation between prescription opioid misuse and later
24 use of heroin, correct?

11:07:59 25 A. Well, I think they include a variety of studies of

1 varying scientific strengths that move a little bit
2 beyond correlation, but, yes, the article does speak to
3 the relationship between prescription opioid use or
4 nonmedical use on the one hand and heroin use on the
11:08:21 5 other hand.

6 Q. Okay.

7 And the whole purpose of the article is to
8 explore that relationship between nonmedical prescription
9 opioid use and heroin use, right?

11:08:31 10 A. Yes.

11 Q. Okay.

12 And to figure out the push and pull of
13 what's causing what, correct?

14 A. Yes.

11:08:38 15 Q. Okay. And you know what a meta-analysis is, right?

16 A. Yes.

17 Q. A meta-analysis, Dr. Keyes taught us all about. I
18 had no idea, in candor, what a meta-analysis was until
19 Judge Polster asked Dr. Keyes to explain it.

11:08:57 20 But as I understood Dr. Keyes' testimony, a
21 meta-analysis is when a scholar in a particular field
22 evaluates and analyzes a broad array of literature on a
23 subject and draws conclusions from it.

24 Do I have that right?

11:09:10 25 A. Yes. Typically or perhaps exclusively in a

1 quantitative fashion.

2 Q. Okay. Now, is this sort of like a meta-analysis?

3 A. I would not consider this a meta-analysis.

4 Q. Okay. But it does do what you said it does, is it
11:09:24 5 walks through and considers an array of articles that had
6 been published previously on the relationship between
7 nonmedical prescription opioid use and heroin use,
8 correct?

9 A. Yes.

11:09:34 10 Q. Okay.

11 And this article concludes that, taken in
12 total, the available data suggests that nonmedical
13 prescription opioid use is neither necessary nor
14 sufficient for the initiation of heroin use, and that
11:09:54 15 other factors are contributing to the increase in the
16 rate of heroin use, correct?

17 A. Well, the -- I mean, the conclusion is that
18 prescription opioids and heroin are each elements of a
19 larger epidemic of opioid-related disorders and death,
11:10:07 20 and that viewing them from a unified perspective is
21 essential to improving public health, which is the
22 approach that I've taken.

23 Q. I'm not fussing you on that portion of the article,
24 but it's not the portion I'm asking you about.

11:10:19 25 I'm asking you about this sentence. In

1 this sentence, these -- while it may be a unified crisis,
2 while both may be critically important, both prescription
3 opioid issues and heroin use, I am not challenging that
4 we want to root out the misuse of both kinds of drugs.

11:10:40 5 Okay? I'm not challenging that.

6 But what they're saying here is the
7 available data suggests that nonmedical prescription
8 opioid use, while it may be a problem unto itself, is
9 neither necessary nor sufficient for the initiation of
10 heroin use, correct?

11:10:56

11 A. Yes. I agree with that.

12 In other words, there are nonmedical users
13 that don't move on to heroin, and there are heroin users
14 that didn't start with nonmedical use.

11:11:08 15 I agree with that.

16 Q. Okay.

17 And is it -- am I correct in saying that
18 there's sort of a difference of opinion on this subject
19 among respected persons in the public health and
20 epidemiology communities?

11:11:27

21 A. What subject are you referring to?

22 Q. The gateway effect.

23 A. It would be helpful to have more information.

24 Q. Okay.

11:11:38

25 Well, are there scholars in epidemiology

1 and public health who would say that nonmedical
2 prescription opioid use is sufficient for the initiation
3 of heroin use or would none say that?

4 A. I don't think anyone in their right mind could, if
11:12:01 5 I understand what you're asking, because if you look at
6 analyses of chronic prescription opioid users, as many as
7 24 to 28 percent engage in nonmedical use.

8 And if you argued that that was sufficient,
9 if I understand you, you would be suggesting that a
11:12:19 10 quarter or more of all chronic opioid users are using
11 heroin. It just doesn't, doesn't pass muster, if I
12 understand the question correctly.

13 Q. Okay. I appreciate it, Dr. Alexander.

14 NSDUH data. Okay. Mr. Lanier asked you
11:12:39 15 about NSDUH data, correct?

16 A. Yes.

17 Q. Now, for the benefit of Sue, who hasn't been in the
18 courtroom for the last two days, let's go through what
19 NSDUH data stands for. And, Sue, it's -- and correct me
11:12:55 20 if I'm wrong, Dr. Alexander -- it's N-S-D-U-H, correct,
21 Dr. Alexander?

22 A. Yes. That's right.

23 Q. And that stands for the National Survey of Drug Use
24 and Health, correct?

11:13:06 25 A. I believe it may be "on" Drug Use and Health, but,

1 yes, National Survey on Drug Use and Health.

2 Q. Okay.

3 And that's an annual survey on drug use,
4 among other things, conducted by the Federal Government,
11:13:20 5 correct?

6 A. Yes.

7 Q. Okay. I believe you testified that you use NSDUH
8 data, correct?

9 A. Yes.

11:13:28 10 Q. Okay.

11 Now, we've talked a little bit about other
12 opioid cases you have testified in for plaintiffs?

13 Correct?

14 A. Yes.

11:13:37 15 Q. Okay. And I do not mean plaintiffs in a pejorative
16 way. I just mean to indicate the difference between the
17 two sides of the fee.

18 Okay?

19 A. That's fine.

11:13:49 20 Q. Okay.

21 So one case in which you testified was the
22 State of Washington case against the big three
23 distributors, Cardinal, McKesson, and AmerisourceBergen,
24 correct?

11:14:03 25 A. Yes.

1 Q. Okay.

2 Another opioids case you testified in was a
3 case brought by the State of Rhode Island, which we've
4 already discussed, against manufacturers and wholesale
11:14:17 5 distributors, correct?

6 A. No. I haven't testified.

7 I believe I've been deposed, but I haven't
8 seen a courtroom in that case.

9 Q. Okay. That's a really fair point and I'm glad you
11:14:28 10 corrected it.

11 You are proposing an abatement plan in the
12 State of Rhode Island case, correct?

13 A. Yes.

14 Q. Okay. We looked at it, right?

11:14:38 15 A. That's true.

16 Q. Okay.

17 You propose an abatement plan in the State
18 of Washington case, correct?

19 A. Yes.

11:14:44 20 Q. Okay. And whereas, in this case, you didn't
21 estimate the OUD populations of Trumbull and Lake
22 Counties. In the State of Rhode Island case you did
23 generate the estimate of the OUD population in the state,
24 correct?

11:15:07 25 A. Yes.

1 Q. And in the State of Rhode Island case, you
2 generated the estimated population of OUD -- patients
3 with OUD in the State of Rhode Island, correct?

4 A. Yes.

11:15:27 5 Q. And the source that you used to generate these
6 estimates was the NSDUH data, correct?

7 A. I used dozens of sources. I believe it would be
8 helpful to see the report, but if the report is based on
9 Apollo, which is an epidemiologic model of the opioid
11:15:53 10 epidemic, Your Honor, then it would have incorporated
11 dozens or more sources of information.

12 The National Survey on Drug Use and Health
13 would be one of those sources.

14 Q. Okay. So as you sit here today, pick either one of
11:16:08 15 the jurisdictions. Okay?

16 What was -- what was the first thing, the
17 first set of data you looked at to generate your OUD
18 population?

19 A. Well, I don't -- I mean, I don't line all the data
11:16:26 20 up and, you know, look at one and then just walk down the
21 line.

22 So I don't know what the first set of data
23 would be, but the bottom line is that NSDUH is
24 incorporated into the Apollo model, and at a state level,
11:16:43 25 it is more feasible and I often have tried to use the

1 Apollo model in order to estimate the OUD population.

2 Q. All right. Paul, 22.

3 MR. HYNES: 22 or 23?

4 MR. LANIER: You have Rhode Island up
11:17:11 5 there.

6 BY MR. DELINSKY:

7 Q. Dr. Alexander, you've been handed CVS MDL 5005.

8 Do you possess that document?

9 A. Yes, I do.

11:17:42 10 Thank you.

11 Q. Okay. This is an appendix to your abatement plans
12 in the State of Rhode Island, correct?

13 A. Yes.

14 Q. Okay. And bear with me for one sec.

11:17:58 15 If you could please turn to Page 5 of that.

16 And by the way, this document outlines how you went about
17 preparing your estimates, correct?

18 A. Yes.

19 Q. Okay.

11:18:17 20 And so if we're on Page 5, you estimate a
21 population for prescription opioid nonmedical use,
22 correct?

23 A. Yes.

24 Q. Okay.

11:18:26 25 And you look at the National Survey on Drug

1 Use and Health, correct?

2 A. Yes.

3 Q. Okay. And then if we keep going in the
4 population -- in the -- if we keep going, I'm sorry, you
11:18:58 5 estimate the prescription -- on the next line down,
6 Opioid Use Disorder population, correct?

7 A. Yes.

8 Q. That's based on NSDUH, too, correct?

9 A. NSDUH and other sources of information, such as the
11:19:17 10 Barocas, et al., manuscript which is noted two lines
11 further down.

12 Q. Correct.

13 And I don't mean to suggest it's your only
14 source but it's one of the foundational sources in the
11:19:25 15 State of Rhode Island and the State of Washington from
16 which you build out your estimate, correct?

17 A. Yes.

18 Again, yes, certainly in Rhode Island and
19 if there was Washington Apollo, then it would have also
11:19:41 20 incorporated NSDUH.

21 Q. Okay. So let's go to Apollo. Okay?

22 You and your company, Monument Analytics --
23 let me step back. I'm already getting compound.

24 You co-founded a company called Monument
11:19:57 25 Analytics, correct?

1 A. Yes.

2 Q. Okay. And you were the majority owner of Monument
3 Analytics, correct?

4 A. Yes.

11:20:04 5 Q. And the work you have done in this litigation is
6 through your -- is through Monument Analytics, correct?

7 A. Yes.

8 Q. Okay.

9 You are not testifying here today on behalf
11:20:17 10 of Johns Hopkins, correct?

11 A. I am most certainly not.

12 Q. Okay. And you're not testifying here in capacity
13 as a professor at Johns Hopkins. Rather, you're
14 testifying through Monument Analytics, correct?

11:20:32 15 A. Yes.

16 Q. Okay.

17 You and your company, monument, have built
18 a computer model to assist in measuring the opioid
19 epidemic and potential abatement measures in particular
11:20:47 20 jurisdictions, correct?

21 A. Yes. An epidemiologic model.

22 Q. Okay. An epidemiologic model.

23 And this model can be used to assist in
24 measuring abatement needs, correct?

11:21:00 25 A. Yes.

1 Q. I believe, as you've already testified, it employs
2 a wide array of data sets, correct?

3 A. Yes.

4 Q. Of which NSDUH is just one?

11:21:12 5 A. Correct.

6 Q. Okay. It includes, like, Wonder data from CDC and
7 TEDS data, and all sorts of other data, correct?

8 A. Yes.

9 Q. Okay.

11:21:23 10 I do not purport to have the brain power
11 needed to understand Apollo. Okay? I just want to put
12 that out there. So if I get something wrong, stop me.

13 But Apollo, as I understand it, processes
14 through 32 variables, which are known in Apollo as
11:21:45 15 compartments, correct?

16 A. Yes. I would -- they're not variables, but they're
17 compartments. They're states, if you will.

18 Q. Okay. I'm sorry. What was that last?

19 A. States, S-T-A-T-E-S. They're not variables.

11:22:00 20 There are many, many variables that reflect
21 the transitions and the transition probabilities between
22 compartments.

23 Q. Okay. So let's just talk about the 32 compartments
24 for a sec.

11:22:10 25 When you mean states, you don't mean, you

1 know, the State of Hawaii, the State of Ohio; you mean
2 medical states, correct?

3 A. Yeah. I mean a state at which -- I mean it's much
4 easier if the Apollo is depicted, the graphic, but I mean
11:22:28 5 a transition -- I mean a state at which a person is.

6 So Apollo allows for one to map people as
7 they progress through different states.

8 For example, the general population,
9 nonmedical users, prescription Opioid Use Disorder,
11:22:48 10 death, and the like. So that's the -- that's the sense
11 in which I use the word, "State."

12 Q. And there's 32 of these states that Apollo
13 assimilates and works with, correct?

14 A. Correct.

11:22:59 15 Q. Okay.

16 And then Apollo -- and I think this is
17 where you were going before -- Apollo processes the
18 interplay of 109 variables that are called parameter
19 estimates, correct?

11:23:14 20 A. Yes. They reflect the probability of an individual
21 moving from one compartment to another compartment.

22 Q. Okay.

23 And the way Apollo works is that there's
24 computerized analytical interplay between the 32 states
11:23:33 25 and the 109 parameter estimates so they're working

1 together?

2 Correct?

3 A. Yeah.

4 I would say that one applies transition
11:23:45 5 probabilities to people, and the people move through
6 these varied compartments.

7 So if we know the likelihood of developing
8 nonmedical use from the general population, then we can
9 take a hundred people in the general population and
11:24:00 10 estimate, in a given month, how many are likely to move
11 to nonmedical use.

12 And so we can apply these probabilities to
13 each of the transitions of interest, and then we
14 calibrate the model. We compare the model against the
11:24:16 15 real world for data. We have real world data for the
16 past eight or 10 years, and we have the model -- what the
17 model predicts for eight or 10 years, and so there's a
18 process of calibration.

19 So we calibrate the model, we conduct what
11:24:31 20 are called uni-variate sensitivity analyses, where we
21 pull the lever on a given variable and see how much an
22 outcome like overdoses changes. There are multi-variate
23 sensitivity analyses where we let lots of different -- we
24 pull lots of different levers simultaneously and see how
11:24:50 25 much the predicted outcomes change.

1 And then, you know, it's built by a team
2 and ultimately subject to peer review. So those are sort
3 of the five ways that we work to try to maximize the
4 functioning of the model and the functioning of these
11:25:06 5 parameters.

6 Q. Okay. You agree it's complicated to a layperson,
7 right?

8 A. It is. It is. It's a fairly complex model.

9 Q. Yeah, okay.

11:25:19 10 And among many other things, the model,
11 when you apply it, enables you, it gives you output on
12 the portion of the OUD population without prior
13 prescription use, by way of example, correct?

14 A. Yes.

11:25:38 15 I mean, one of the distinctions between
16 Apollo and several other models that have been developed
17 is that Apollo has a pathway built in to allow for people
18 to develop heroin use disorder that didn't have
19 antecedent prescription Opioid Use Disorder.

11:25:57 20 So a lot of the models prior to Apollo just
21 sort of treated it as one pathway. And in contrast to
22 those models, Apollo allows for us to estimate this
23 population.

24 Q. And the Apollo model, with all the inputs, for lack
11:26:11 25 of a better word, it can be run monthly, correct?

1 A. It's run on a monthly cycle, yes.

2 Q. And so each month is informed by the month before?

3 A. Yes.

4 Q. Okay.

11:26:23 5 And you've used this model in preparing
6 your abatement estimates and redress models in your
7 abatement plan in other cases, correct?

8 A. Yes.

9 In cases where there's been sufficient
11:26:35 10 data, which is generally at a state rather than a county
11 level, and where the plaintiffs have requested and the
12 communities have requested, I've worked to develop an
13 Apollo for those models.

14 Q. So by way of example, you use the Apollo model in
11:26:50 15 the State of Washington case, correct?

16 A. Yes, I believe that's true.

17 Q. And in the State of Rhode Island case as well,
18 correct?

19 A. Yes.

11:26:58 20 Q. Okay.

21 I believe you just answered this question
22 but you did not run Apollo for Lake County in preparing
23 your abatement plan, correct?

24 A. I did not.

11:27:05 25 And I did address the reason why.

1 Q. Okay.

2 And you didn't run it, you did not run the
3 Apollo model for Trumbull County in preparing your
4 abatement plan, correct?

11:27:14 5 A. Correct, because I did not have the data to do so,
6 nor was I requested to do so.

7 Q. Right.

8 When you're operating at a county level,
9 the quality and the nature of the data available is more
11:27:27 10 limited, correct?

11 A. Yeah.

12 I mean, there's -- there's -- you know,
13 county level data has an upside, too, right, which is
14 that you have local experts on the ground and you have
11:27:41 15 county-level reports and such.

16 But I didn't have data and didn't attempt
17 to build a county level Apollo in this instance.

18 Q. Okay. Dr. Alexander, I am nearing the end.

19 I just have a few more questions. Okay?

11:27:59 20 A. Yes.

21 Q. I'm going to ask you the following questions.

22 Everybody in this room, there's no jury, we're all

23 professionals. I don't mean to disparage you in any way

24 whatsoever. We just need to make a record of everything.

11:28:10 25 Okay?

1 A. Yes.

2 Q. You're working for a lot of other plaintiffs in
3 opioid litigations, correct?

4 A. Yes.

11:28:16 5 Q. Am I right that you're working with or have worked
6 on a dozen or more cases on behalf of plaintiffs in the
7 opioids litigations?

8 A. Yes.

9 Q. Okay. West Virginia?

11:28:31 10 A. Yes.

11 Q. California?

12 A. Yes.

13 Q. Washington, Rhode Island?

14 A. Yes.

11:28:37 15 Q. I think there was an Arizona case?

16 A. I don't know if that's been disclosed or I don't
17 know the status of that.

18 Q. Okay.

19 Well, we're a defendant so we have your
11:28:49 20 report there. It's been disclosed.

21 The Arizona hospital case?

22 A. Yes.

23 Q. Okay. And several other cases throughout the
24 country, correct?

11:28:59 25 A. Yes.

1 Q. Okay.

2 You're assisted by the folks at Monument
3 Analytics, correct?

4 A. Yes.

11:29:06 5 Q. These engagements are all run through Monument
6 Analytics -- and I don't mean that in a pejorative way --
7 correct?

8 A. Yes.

9 Q. Okay.

11:29:14 10 And as you've already testified, you're the
11 co-founder and majority owner of Monument, right?

12 A. Yes.

13 Q. You and Monument have billed several million
14 dollars in connection with your work for plaintiffs in
11:29:25 15 the opioids litigation, correct?

16 A. Yes.

17 Q. Okay.

18 I think you testified, as of last October
19 when we were here at trial, the first trial, you and
11:29:33 20 Monument Analytics had billed about \$6 million?

21 A. Yes. Across, I think, the 17 cases, that's right.

22 Q. Okay. Today, it's more because you've been doing
23 work since then, correct?

24 A. Yes.

11:29:44 25 Q. Would I be right in saying that you and Monument

1 have billed in excess of \$7 million for the opioids
2 cases?

3 A. I don't believe so.

4 Q. Okay. More than six million, less than seven
11:29:56 5 million?

6 A. Yes.

7 Q. Okay. And these billings, of course, include your
8 own time?

9 A. Yes.

11:30:01 10 Q. And your rate is \$900 per hour?

11 A. Yes.

12 Q. Okay.

13 Dr. Alexander, thank you for indulging me
14 on those questions.

11:30:08 15 A. Thank you.

16 Q. And thank you for your time.

17 A. Thank you.

18 MR. DELINSKY: I pass the witness, Your
19 Honor.

11:30:13 20 THE COURT: Okay. Anyone else for
21 defendants?

22 MS. FUMERTON: Yes, Your Honor.

23 THE COURT: Okay.

24

25

1 CROSS-EXAMINATION OF G. CALEB ALEXANDER

2 BY MS. FUMERTON:

3 Q. Good morning, Dr. Alexander.

4 A. Good morning.

11:31:01 5 Q. My name is Tara Fumerton. I am one of the
6 attorneys for Walmart, and I actually had the pleasure of
7 taking your deposition back on February 11th of 2022.

8 Do you recall that?

9 A. Yes, I do.

11:31:12 10 Q. It's nice to see you again.

11 A. Thank you.

12 Q. I just have a couple quick questions that we'll
13 hopefully get through quickly.

14 Do you still have a copy of Plaintiffs'
11:31:24 15 Exhibit 23105A handy?

16 A. Yes.

17 Q. Which was your redress model for Lake County?

18 A. Yes, I do.

19 Q. Would you please pull that out and turn to Page 15.

11:31:47 20 A. Okay.

21 Q. Okay.

22 And I just want to circle back to something
23 you testified about yesterday and it pertains to actually
24 something you and I discussed at your deposition in
11:31:55 25 February.

1 So if you'd look at the redress model, this
2 is for Lake County. And you testified yesterday that if
3 we look at Line 1 for year 2021, you are estimating the
4 total number of individuals with OUD in Lake County for
11:32:17 5 2021, which is based on Dr. Keyes' estimate, correct?

6 A. Yes.

7 Q. And then yesterday you also testified about Line 3,
8 and there it's listed as the total number of individuals
9 with OUD to receive treatment, and year 2021 for Lake
11:32:42 10 County, and you have estimated 2,267 individuals,
11 correct?

12 A. Yes.

13 Q. And then yesterday, I think you said something
14 along the lines -- and I actually have your testimony
11:32:54 15 here -- but that you think it's really better thought of
16 as a treatment slot.

17 And so what I'm trying to understand is
18 what exactly you meant by that because I think when we
19 talked about these numbers back in February, you never
11:33:09 20 used the term, "Slot."

21 A. I'm sorry. A treatment --

22 THE COURT: I think slot, S-L-O-T.

23 THE WITNESS: Oh, a treatment slot. I see.

24 Thank you.

11:33:22 25 Yes. A treatment slot. Yes.

1 BY MS. FUMERTON:

2 Q. Okay.

3 And so as you explained yesterday, a slot
4 could mean that more than one person for a given year
11:33:30 5 could occupy that slot, correct?

6 A. Yes. Exactly.

7 Q. Okay.

8 So what I want to understand is what is
9 your estimate for 2021 for Lake County as to the total
11:33:43 10 number of individuals with OUD who will receive
11 treatment?

12 A. Yeah. I don't -- I don't have a precise estimate
13 of the total number of individuals.

14 The footnote to entry two describes perhaps
11:34:02 15 an alternative way of thinking of these slots, which may
16 be -- I don't know if it's more intuitive or not, but it
17 stipulates or clarifies that this is the proportion of
18 individuals with OUD in treatment at any given month
19 during the year.

11:34:18 20 But I don't have a precise number for the
21 number of unique individuals, the unique number of
22 bodies, if you will, that will receive treatment in year
23 one.

24 Q. So in year one, you have the target of at least
11:34:34 25 2,267 individuals or slots, correct?

1 A. Yes.

2 Q. And it could be more than that. So let's say it
3 was two individuals occupied each slot, is that
4 reasonable?

11:34:43 5 A. It could be.

6 It could be the same person coming back a
7 second time. It could be one person occupying a slot for
8 two years. It could be three people sharing a slot, yes.

9 Q. You just don't know how many people for year one
11:35:00 10 will receive treatment for OUD in Lake County, correct?

11 A. Well, I know treatment duration is far too short
12 and there's an enormous opportunity to improve that.

13 And I know the evidence that speaks to the
14 benefits of longer treatment, but I don't have a precise
11:35:15 15 number of individuals that will receive treatment in year
16 one.

17 Q. Okay. And I just want to make sure the record's
18 clear.

19 So you do not know what the number of
11:35:25 20 individuals -- and you don't have an estimate even -- of
21 what the number of individuals will be who receive
22 treatment for OUD in year one?

23 A. That's --

24 Q. In Lake County, correct?

11:35:37 25 A. That's correct.

1 Q. And let's say it was two individuals occupied one
2 slot.

3 That would be 4,534 individuals who would
4 receive treatment for OUD, correct?

11:35:49 5 A. Well, if it was two unique individuals that
6 occupied every slot for six months each, then that
7 calculation is -- although I would need to do the math,
8 but that calculation sounds about right.

9 Q. Okay. And approximate. I mean these are all
11:36:05 10 estimates, right?

11 A. Yes.

12 Q. So 4,534 is about 80 percent of 5,668, correct?

13 A. Well, again --

14 Q. Just the math, right?

11:36:19 15 A. Can you repeat the question, please?

16 Q. Sure. 4,534 is about 80 percent of your estimate
17 of the individuals with OUD, which is 5,668, correct?

18 A. Yes.

19 Q. And just briefly -- do you have P 23105B, which is
11:36:47 20 the redress model for Trumbull County?

21 THE COURT: I want to make sure I
22 understand this.

23 Stick with 2021. 5,668, those are actual
24 individuals that you're estimating, Doctor, that have
11:37:08 25 OUD?

1 THE WITNESS: Correct.

2 THE COURT: Okay. And then you're
3 projecting 40 percent of them will receive treatment in
4 2021, that's your estimate?

11:37:22 5 THE WITNESS: I'm -- I'm projecting that
6 enough treatment slots be provided so that --

7 THE COURT: Okay. And a treatment slot
8 is -- is one year of treatment?

9 THE WITNESS: Yes.

11:37:37 10 Or it's a -- it's a place for treatment.

11 So I'm suggesting in year one, Your Honor,
12 that 40 percent -- that in any given month, 40 percent of
13 the total population in the county with Opioid Use
14 Disorder is engaged in treatment.

11:37:56 15 In any given month of that first year, that
16 40 percent of that total number, 5,668, is engaged in
17 treatment.

18 THE COURT: Okay.

19 And what is the -- what is the cost of
11:38:10 20 one -- monthly or annually? Somewhere you've got this,
21 the cost of treatment of one person per month or one
22 person per year, however you do that. That's
23 what's -- that's the cost that's projected, right?

24 THE WITNESS: Yes, Your Honor.

11:38:24 25 So under, "Suggested costs," if we could

1 scroll down on the projector, the outpatient treatment
2 costs per month, for example, it's estimated in 2017
3 dollars to be \$3,048.

4 It's further down. It's projected as well.

11:39:02 5 THE COURT: Okay. I think I understand
6 that.

7 Thank you.

8 BY MS. FUMERTON:

9 Q. And just to wrap this up, Dr. Alexander, if we look
11:39:12 10 at P 23105B, which is the redress model for Trumbull
11 County, and look at the same type of figures, they're
12 different because it's a different county, right?

13 A. Yes.

14 Q. You've estimated, based on Dr. Keyes' estimation,
11:39:26 15 that there are 7,221 total number of individuals with OUD
16 in year 2021, correct?

17 A. Yes.

18 Q. And based on the explanation you just gave, you say
19 you think there's 40 percent of them will have
11:39:42 20 a -- you're calculating 40 percent to have a treatment
21 slot for an entire year, and that gets you 2,888,
22 correct?

23 A. Yes.

24 Again, I think perhaps a more intuitive way
11:39:53 25 might be to say that during any given month in year one,

1 that 40 percent of the total population with Opioid Use
2 Disorder will be engaged in treatment.

3 Q. But again, for Trumbull County, you aren't actually
4 providing an estimate of the number of individuals who
11:40:13 5 you think will receive treatment for OUD, correct?

6 A. No. That's correct.

7 MS. FUMERTON: Thank you.

8 I pass the witness.

9 THE WITNESS: Thank you.

11:40:32 10 CROSS-EXAMINATION OF G. CALEB ALEXANDER

11 BY MR. HALL:

12 Q. Good morning, Dr. Alexander. My name's Jeff Hall,
13 I represent Walgreens.

14 You and I have not met before, have we?

11:40:41 15 A. I don't believe so.

16 Good morning.

17 Q. I want to follow up on several of the questions you
18 were asked about yesterday in your direct examination.

19 First, let me show an article that you were
11:40:54 20 asked about.

21 This is the article titled, *Vital Signs:*
22 *Prescription Opioid Pain Reliever Use During Pregnancy,*
23 and it was cited by Dr. Young.

24 Do you remember being asked about this
11:41:19 25 article?

1 A. Yes, I do.

2 Q. Now, before yesterday, had you seen this article
3 before?

4 A. I don't recall.

11:41:28 5 I look at an enormous amount of scientific
6 literature.

7 I don't recall.

8 Q. Okay. I did look and the article's not listed in
9 the materials that you relied on for purposes of your
11:41:40 10 opinion in this case.

11 Does that sound right to you?

12 A. That -- that may be well the case, yes.

13 Q. Is it fair to say -- well, let me be specific.

14 This is Page 4, Table 2, and there are
11:41:57 15 statistics about opioid use during pregnancy that are
16 displayed in this article.

17 And this is what you were asked about
18 yesterday, correct?

19 A. Yes.

11:42:13 20 Q. Is it fair to say you have not had an opportunity
21 to examine the underlying data concerning, for example,
22 the prescription opioids that were prescribed by OB/GYN,
23 midwife, prenatal care providers as cited in this
24 article?

11:42:35 25 A. I don't know fully what you mean by "Examine the

1 underlying data."

2 It would be -- I would want to know what
3 the data source is. It may well be one that I have
4 familiarity with, such as the National Survey on Drug Use
11:42:48 5 and Health.

6 Q. All right.

7 But you aren't in a position to tell us
8 with respect to any of the prescriptions that are
9 included in this article as to whether those were
11:42:59 10 appropriate or inappropriate opioid prescriptions, are
11 you?

12 A. No. Not without further review.

13 But I'm not sure that that can be discerned
14 from this type of scientific information.

11:43:15 15 Q. Now, you were asked yesterday -- I think the
16 question described this as alarming that there are health
17 care providers, doctors, surgeons, anesthesiologists,
18 that are prescribing opioids to women and -- when they're
19 pregnant, and it includes, as listed here, during surgery
11:43:38 20 before or during -- before pregnancy or during pregnancy.

21 Do you recall that question?

22 A. Yes.

23 Q. And you were asked whether part of the plan that
24 you are suggesting here or putting forth as the abatement
11:43:55 25 remedy for Lake and Trumbull Counties would help to

1 educate the health care system to address issues like
2 this.

3 Do you recall that?

4 A. Yes.

11:44:04 5 Q. And so I just want the record to be clear.

6 You are aware that the remedy included in
7 your abatement plan for Lake and Trumbull Counties would
8 include the education of doctors, surgeons,
9 anesthesiologists, other health care providers, about
11:44:25 10 opioid use during pregnancy and otherwise?

11 A. Yes.

12 Q. And that would be, under your plan, if it were
13 implemented, funded, this education of the health care
14 system, including the doctors and the anesthesiologists
11:44:39 15 and surgeons, by Walgreens, Walmart and Lake -- and,
16 excuse me, and CVS under the plaintiffs' case?

17 A. Well, that's up to the Courts.

18 That's up to the Courts.

19 Q. But it's included in your plan set forward and
11:44:57 20 discussed yesterday, P 23105?

21 A. Yes.

22 Q. You were asked yesterday, also, about some of the
23 components of your abatement plan that actually really
24 don't take that much money, they're almost rounding
11:45:20 25 errors.

1 Do you remember that?

2 A. Well, I don't know if I used those words, and I
3 guess it would -- but I do remember the general
4 conversation.

11:45:31 5 Q. You're correct. They were included, those words
6 were used in the question.

7 And I just want to ask you do you know if
8 Lake County and Trumbull County are doing some of the
9 things in your plan that don't cost a lot of money that
11:45:51 10 are effective and efficient in addressing the opioid
11 epidemic in Lake and Trumbull County?

12 A. I mean, I typically have not focused on economics.
13 I have focused on the science and the
14 public health needs, and I have not spent a great deal of
11:46:08 15 time understanding the specific costs and the relative
16 costs of different activities proposed.

17 I do know that the counties, my
18 understanding is, have spent an extraordinary amount on
19 working to try to staunch the bleeding thus far.

11:46:27 20 Q. Well, would you describe any of the components of
21 your plan as involving almost a rounding error and not a
22 significant expense?

23 Do you think that's a fair characterization
24 of any elements of your plan?

11:46:43 25 A. I think questions of rounding errors are ones

1 beyond the scope of what I've worked to do.

2 Q. Do you have P 23105A handy?

3 That's the redress model for Lake County.

4 A. Yes, I do.

11:47:05 5 Q. Let me show on the screen that document.

6 I'd like to ask you about the first
7 category in your abatement plan.

8 This one is for Lake County. And that is
9 category one, prevention, reducing opioid oversupply, and
11:47:37 10 improving safe opioid use.

11 Do you see that category?

12 A. Yes, I do.

13 Q. Do you agree that this, this section, addresses
14 steps that would reduce the oversupply of prescription
11:47:54 15 opioids in Lake County and also reduce potential
16 diversion of those opioids?

17 A. Yes.

18 Q. And similarly, same question for Trumbull County in
19 P 23105B, would your answer be the same for Trumbull
11:48:13 20 County, category one?

21 A. Yes.

22 Q. Now, if we look at some of the detail here, turning
23 to Page 7, which is 1 C, safe storage and drug disposal,
24 let me know when you have that or you can look on the
11:48:30 25 screen, whatever is convenient.

1 A. That's -- that's fine. Please.

2 Q. Okay.

3 And in this schedule, I want to make sure I
4 understand it, the Line 1 is the population and estimates
11:48:48 5 that you make, and it actually is fixed for the 15 years?

6 And then you include some suggested cost
7 data below from other locations.

8 Is that right?

9 A. Yes, as well as the proportion of opioids out of
11:49:02 10 all medications collected at take-back programs.

11 Q. And that's based on source number two?

12 A. Yes.

13 Q. All right.

14 Now, yesterday you said it should be no
11:49:17 15 harder to get rid of a box -- a bottle of Oxycodone than
16 it is to get it filled in the first place.

17 Do you recall that?

18 A. Yes.

19 Q. And that's one of the goals of safe storage and
11:49:28 20 drug disposal; that is, to make it easier for people who
21 have unused prescriptions to safely and appropriately
22 dispose of them.

23 Fair?

24 A. Yes.

11:49:38 25 Q. Now, you described these steps in your report.

1 Do you recall that?

2 A. Which steps are you referring to?

3 Q. That is, the safe disposal, safe storage and drug
4 disposal steps.

11:49:59 5 A. Yes. I provide more context in my report for this,
6 and the scientific rationale for this category, yes.

7 Q. Let's turn to that for a minute, please.

8 Do you have your report, which is P 23100
9 handy?

11:50:22 10 And specifically Page 22.

11 A. Yes.

12 Q. All right.

13 And in this section of your report, these
14 next two pages, is it fair to say you describe in some
11:50:36 15 more greater detail what these safe storage and drug
16 disposal steps involve that you recommend as part of your
17 abatement plan?

18 A. Yes.

19 Q. And if we just walk through them, in Paragraph 60,
11:50:50 20 you talk about something called -- maybe it's not
21 60 -- you talk about something called receptacles,
22 take-back receptacles.

23 Do you know what I'm describing?

24 A. Yes.

11:51:08 25 Q. And what are take-back receptacles with respect to

1 prescription opioids?

2 A. They're a receptacle that people can use to drop
3 their unused opioids.

11:51:25

4 Q. And are those installed in locations under the
5 direction and in coordination with the DEA regulations,
6 to your understanding?

7 A. Yes.

8 Q. All right.

11:51:38

9 And you mention in your report, in
10 Paragraph 62, you refer to these permanent collection
11 sites authorized by the DEA?

12 Is that right?

13 A. Yes.

11:51:54

14 Q. And on the next page of your report, we see a
15 picture of such a receptacle.

16 Right?

17 A. Yes.

18 Q. And do you know where that receptacle is located?

19 Is it in a DEA-approved site?

11:52:05

20 A. I believe it's in a pharmacy.

21 Q. Okay. And you say in Paragraph 62, that Lake
22 County, across Lake County, there are seven permanent
23 collection sites.

24 Do you see that?

11:52:28

25 A. Yes.

1 Q. And those are at Government or police facilities,
2 correct?

3 A. Yes.

4 Q. And then you also refer to Trumbull County, and
11:52:41 5 we'll come to that in a minute.

6 Do you know, in addition or beyond the
7 seven sites you mention in Lake County, if there are any
8 others in addition to those seven?

9 A. Well, at the time that I wrote this report, it was
11:52:56 10 based on the information that I had available to me at
11 the time.

12 And I believe that these reflected the
13 permanent sites. They certainly reflected the permanent
14 sites that I was aware of at the time I wrote this
11:53:07 15 report, but I'm not aware of, you know, today how many
16 permanent sites there may be.

17 Q. Were you aware, back when you wrote your report in
18 April, 2021, if those seven were all that was available
19 in Lake County?

11:53:22 20 A. I -- I don't recall.

21 I mean, I don't recall.

22 The language suggests to me that I felt
23 that these reflected the sites, but there may well have
24 been others that I wasn't aware of.

11:53:39 25 Q. Do you know whether -- well, let me refer back to

1 your testimony yesterday.

2 Do you recall you were asked how many drug
3 disposal sites CVS had in its pharmacies in Lake and
4 Trumbull County and you said you don't know?

11:53:56 5 Do you recall that testimony?

6 A. Yes, I do.

7 Q. Do you know whether Walgreens has any take-back
8 receptacles for prescription drugs in any of its
9 pharmacies in Lake County?

11:54:07 10 A. I would imagine they may, but I don't know.

11 Q. Okay. Now, the next sentence in Paragraph 62
12 refers to drug disposal packets.

13 Do you see that?

14 A. Yes.

11:54:24 15 Q. Are drug disposal packets another form of safe
16 disposal of prescription medicines?

17 A. Yes, they are.

18 Q. And what are drug disposal packets, please?

19 A. They're essentially bags that have, you know,
11:54:40 20 chemicals in them that allow for products to
21 be -- pharmaceutical products to be rendered inert and
22 safely, safely thrown away.

23 Q. Is it possible for someone who has excess
24 prescription medicines, who obtains a drug disposal
11:55:02 25 packet, to safely dispose of a prescription medicine in

1 their home?

2 A. Yes. I believe so.

3 Q. Okay.

4 That would accomplish the goal you said

11:55:12 5 yesterday, at least in that instance, of making it as

6 easy for someone to get a prescription for an opioid as

7 it is to dispose of it?

8 A. Yes.

9 Q. In fact, it's a little easier if you already have

11:55:25 10 those, you can do it in your home.

11 Fair enough?

12 A. Yes.

13 Q. All right.

14 And do you know whether Walgreens provides

11:55:36 15 drug disposal packets in any of its stores, its

16 pharmacies, in Lake and Trumbull County?

17 A. I don't. Again, I wouldn't be surprised if they

18 do, but I don't know for sure.

19 Q. And I take it then you don't know that Walgreens

11:55:51 20 provides them in pharmacies in Lake and Trumbull County

21 for free to people?

22 A. I was not aware of that.

23 Q. And one of your sentences in your report says drug

24 disposal packets are available at no cost across 11 sites

11:56:08 25 in Trumbull, and you refer to public facilities.

1 But you didn't investigate whether any
2 pharmacies had those as well?

3 A. I don't remember the process that I used to vet the
4 literature in this instance, nor the level of detail in
11:56:28 5 conversations that I may have had with experts on the
6 ground to, you know, to produce the information that I
7 provide here.

8 Q. Okay.

9 And just to be clear, the conversations
11:56:39 10 with the experts on the ground are the 45-minute or so
11 conversations you had with Ms. Fraser in Lake County and
12 Ms. Caraway and Ms. Thorpe in Trumbull County?

13 A. Yes, as well as reviewing materials relevant to the
14 counties in some cases generated by the counties
11:56:57 15 regarding their activities.

16 Q. Did you ever go into a Walgreens or CVS or Walmart
17 in Lake and Trumbull County?

18 A. If I had, it probably would have been when I lived
19 here during medical school, which was many years ago.

11:57:15 20 Q. Okay. Certainly not as part of your work in this
21 case, developing your abatement remedies?

22 A. That's correct.

23 Q. Do you agree that the provision of the safe
24 disposal programs, whether it's a drug take-back
11:57:29 25 receptacle as permitted by the DEA or the safe disposal

1 packets provided as an alternative, are efficient ways to
2 handle the oversupply of prescription opioids?

3 A. Well, I mean, the -- by far, the most important way
4 is to decrease the oversupply at the start. Right?

11:57:52 5 Because these are of a highly imperfect way of getting
6 all of the opioids off -- out of bedroom nightstands and
7 bathroom cabinets across these counties.

8 So the single most important way is to
9 decrease the use of these in the first place through
11:58:09 10 other, other parts of the abatement program that I
11 propose.

12 With that being said, I think in -- I think
13 we can do better with respect to collecting all the
14 unused opioids in the community.

11:58:20 15 Q. And you agree that it has efficiencies when
16 pharmacies provide these disposal methods for customers
17 who have prescription medicines?

18 A. Well, I don't think it should take the place of
19 many other interventions, including those targeting
11:58:37 20 prescribers and pharmacies per se, but, yes, there is
21 certainly some economy of giving somebody a disposal bag
22 when they get the prescription.

23 Q. And you say that in the next paragraph of your
24 report, you say that unless disposal programs are
11:58:54 25 convenient, they are unlikely to be widely used and the

1 use of pharmacies as part of a reverse logistics program,
2 where the standard distribution system is reversed to
3 return unused or unwanted product, has many efficiencies.

4 That's consistent with your view, isn't it,
5 sir?

11:59:08

6 A. Yes, it is.

7 Q. And now, you mentioned stopping the oversupply at
8 the start.

9 That's part of the education of the health
10 care system that you referred to yesterday.

11:59:16

11 True?

12 A. Yes. And other components of my abatement program,
13 such as education of the community at large.

14 Q. Now, you mentioned that you don't know if Walgreens
15 has a safe disposal receptacle or take-back receptacle in
16 any of its stores in Lake County.

11:59:40

17 Right?

18 A. Correct.

19 Q. You do know that Walgreens does have take-back
20 receptacles in some stores.

11:59:58

21 Right?

22 A. Yes. I believe that's true.

23 I believe all the major pharmacy retailers
24 have, at this point in time, begun to initiate these
25 sorts of programs.

12:00:12

1 Q. In fact, in your report on the very next page, you
2 show a take-back facility -- excuse me -- take-back
3 receptacle in a community pharmacy.

4 Do you see that?

12:00:29 5 A. Yes. I believe a Walgreens pharmacy.

6 Q. Well, you don't say Walgreens, do you?

7 A. I don't. No.

8 Q. And, in fact, there's a Walgreens logo on that
9 receptacle that's been photoshopped out of it, hasn't it?

12:00:45 10 A. I would need to -- I would need to take a look.

11 Q. Here's the same photo from Walgreens' web page and
12 we see the Walgreens logo.

13 The photo in your report had Walgreens
14 photoshopped out, right?

12:01:08 15 Did you do that?

16 A. I may have done so, but I didn't do so for
17 this -- for this report or purpose.

18 Q. Did anyone, other than you and the plaintiffs'
19 lawyers, have input into the use of that photo?

12:01:23 20 A. Well, I don't think the plaintiffs' lawyers had any
21 input -- well, I mean I suppose they could have raised
22 concern but I've never been advised -- I didn't engage
23 with the plaintiffs' lawyers about this matter. And to
24 the degree that I may have removed this logo, it was not
12:01:45 25 as part of litigation that I did so.

1 This is a slide that I've used in many
2 contexts that either predate or are separate from
3 litigation. And my guess is that in doing so, that I
4 de-branded it, if you will, at some point in time.

12:02:02 5 Q. Okay. But there's no doubt you did remove the
6 logo, just so we're clear?

7 A. Well, I don't -- again, I don't recall the genesis
8 of when this ended up in my opioid slide deck that I
9 typically use, but I think it's well-possible that
12:02:20 10 I -- that I removed the logo, yes.

11 MR. HALL: Pass the witness, Your Honor.

12 THE COURT: Okay.

13 The question is how long -- how long do we
14 think redirect and recross will be?

12:02:33 15 I'm happy to complete it so the Doctor can
16 be on his way if it's going to be relatively short, but
17 again, I don't control the questions.

18 You all ask them.

19 MR. LANIER: Your Honor, I would like to
12:02:44 20 think that I can probably do redirect within 15, maybe 20
21 minutes, but it's pretty short.

22 THE COURT: Well --

23 THE WITNESS: Your Honor, please, I don't
24 mind waiting whatsoever. So, please, don't do anything
12:02:59 25 on my behalf.

1 THE COURT: Well, I've got a matter at
2 12:30. I've got to break then.

3 Maybe we can just see if we can wrap up.
4 I'd like to see if the Doctor can leave. So why don't we
12:03:13 5 move expeditiously?

6 MR. LANIER: I'll go as quickly as I can,
7 Judge.

8 You listen fast and Sue types fast.

9 REDIRECT EXAMINATION OF G. CALEB ALEXANDER

12:03:22 10 BY MR. LANIER:

11 Q. Dr. Alexander, to try to make this go quicker, I
12 have done a roadmap showing how I've reorganized all of
13 these questions so that we've got it in three distinct
14 groups.

12:03:35 15 Okay?

16 There were challenges to the breadth of
17 your plan, to the way you worked up your plan, and to the
18 detail of your plan.

19 And I want to go into each of those areas.

12:03:48 20 I've segregated out the questions into those areas so
21 it's not just chronology of how you were asked.

22 Do you understand me?

23 A. Yes.

24 Q. All right. I think this is the quickest way to do
12:03:58 25 this.

1 Let's start with the breadth of your plan.

2 Here's my question.

3 Is the epidemic caused by oversupply of
4 prescription opioids abatable?

12:04:14 5 A. Yes, it is.

6 Q. To abate it, must your plan include all patients
7 with Opioid Use Disorder?

8 A. Yes.

9 Q. Your plan and nonprescription opioid users, can you
10 solve the legal opioid epidemic by only educating the
11 people who use the drug legally?

12 A. No.

13 Q. In other words, can you segregate out the education
14 cost and say, "Only pay attention to this if you have
12:04:54 15 used prescription opioids; otherwise, ignore it"?

16 A. No.

17 Q. Can you solve this epidemic among the people who
18 use prescribed opioids by only providing emergency room
19 services and education to those people who use them
12:05:16 20 legally?

21 A. No.

22 Q. When someone comes in with an overdose and they're
23 an OD patient in an opioid situation, can you train the
24 doctors to say, "Before you treat them, try to find out
12:05:29 25 if they've ever used a prescription opioid from a certain

1 pharmacy"?

2 A. No.

3 Q. Can you solve the legal opioid epidemic by ignoring
4 prescription users who have used other drugs as well?

12:05:49 5 A. No.

6 Q. The reach of your plan, next question, would your
7 plan turn these communities around and make them models
8 for Ohio?

9 MR. DELINSKY: Objection, Your Honor.

12:06:04 10 MR. LANIER: All right. Let me ask it this
11 way.

12 THE COURT: I'll sustain it.

13 MR. LANIER: Yeah.

14 THE COURT: I'll sustain it that way.

12:06:10 15 MR. LANIER: Let me ask it -- I'll take
16 that off. Let me ask it this way.

17 BY MR. LANIER:

18 Q. Would your plan make a difference if it were put in
19 place?

12:06:17 20 A. I think it could make a huge difference in the
21 communities, yes.

22 Q. When you were asked about things like providing
23 needles, when clearly providing needles doesn't do
24 anything for someone who's popping OxyContin, right?

12:06:36 25 A. True.

1 Q. But you said it's a bridge to treatment.

2 Would you please explain.

3 A. Well, if you speak with people that do harm
4 reduction, they'll tell you that the road to recovery is
12:06:49 5 paved with relationships.

6 And programs, such as syringe exchange,
7 often are the only and best entry point into the
8 treatment system for people that may be using, injecting
9 heroin or Fentanyl.

12:07:06 10 So these, these programs aren't just
11 functioning to let people swap needles. They're
12 functioning to help increase access to an uptake of
13 treatment.

14 Q. In that regard, you were asked questions about the
12:07:25 15 Hopkins plan, I think it was called. It was Defendants'
16 Exhibit 49997.

17 Do you remember that?

18 A. Yes.

19 Q. In that plan itself, they talk about the importance
12:07:39 20 of needle exchange.

21 Is that fair to say?

22 A. I wouldn't be surprised.

23 Q. Is the same true for the Fentanyl testing strips
24 you provide?

12:07:58 25 A. Yes.

1 Q. Do they also serve as a bridge to treatment?

2 A. Yes, they do.

3 Q. And in that regard, like the Hopkins plan,
4 defendants' 4997, areas of need, it talks about certain
12:08:20 5 geographic areas would benefit from specific programs,
6 such as housing assistance or syringe services programs.

7 Do you include both of those in your plan?

8 A. Yes, I do.

9 Q. Last on the plan, breadth. You were asked
12:08:53 10 questions about the Compton article.

11 Do you remember those?

12 A. Yes, I do.

13 Q. And the Compton's article, Compton article was
14 Defendants' Exhibit 4992.

12:09:06 15 First of all, you've already put into
16 context what the concern was in the article.

17 Fair?

18 A. Yes, I did.

19 Q. And so to further make sure the record is clear,
12:09:19 20 especially on appeal with regards to this, if we look at
21 the language on Page 156 and 157 as it has this context,
22 it talks about Siegal and others were among the first to
23 suggest the pathway from nonmedical use of opioids to
24 heroin use. They found that in Ohio, 50 percent of
12:09:45 25 persons 18 to 33 years of age, who had recently begun

1 using heroin, reported having abused opioids, primarily
2 OxyContin, before initiating heroin use.

3 That was a smaller study, that was an early
4 study, but have you continued to find that to be
12:10:04 5 typically true?

6 A. Yes.

7 Q. And this section continues on Page 157, that the,
8 "Studies suggest a clear link between nonmedical use of
9 prescription opioids and heroin use, especially among
12:10:23 10 persons with frequent nonmedical use or those with
11 prescription-opioid abuse or dependence."

12 Do you find that to be true still today?

13 A. Yes, I do.

14 Q. And in conclusion, with this article, there are
12:10:40 15 some suggestions in the conclusion section that talk
16 about prevention efforts that target major risk factors
17 for initiation of opioid use, including the excess
18 availability of prescription opioids. And other risk
19 factors that can be developed. Are those things you
12:11:03 20 target in your plan?

21 A. Yes, they are.

22 Q. All right.

23 Let's move on then from the breadth of your
24 plan to the next stop on the road, which is the way you
12:11:18 25 did your workup.

1 Okay?

2 A. Yes.

3 Q. Plan workup.

4 First of all, you were asked in regard to

12:11:28 5 your report about Page 29, Paragraph 87. You said you
6 conducted no focus groups, no qualitative interviews, et
7 cetera.

8 Remember those questions?

9 A. Yes.

12:11:39 10 Q. So the record is clear, do you cite the OSAM
11 network who did focus groups and qualitative interviews?

12 A. Yes, I do.

13 Q. And do you do that in Paragraph 87 of your report
14 where you say the OSAM network has published semiannual
12:11:59 15 reports since 2000 using trends across eight subregions
16 in Ohio and targeted response initiatives?

17 Do you say that?

18 A. Yes. Yes.

19 Q. And do these include focus groups and qualitative
12:12:14 20 interviews?

21 A. Yes, they do.

22 Q. Did you have to go and reinvent the wheel in this
23 case?

24 A. No, I did not.

12:12:24 25 Q. Did you feel a need to repeat what OSAM had done as

1 if it were insufficient or inadequate?

2 A. No, I did not.

3 Q. Next, you were asked about some articles where you
4 had done some OUD survey questions.

12:12:44 5 Do you remember that?

6 A. Yes.

7 Q. And you were shown Defendants' 4995, the article
8 you co-authored with a gal named Canan, or something?

9 A. Yes, a doctoral student.

12:13:00 10 Q. Wonderful.

11 And Defendants' 4994 where you co-authored
12 with a doctor named Bickett, is that correct?

13 A. Yes. Another doctoral student.

14 Q. And I would like for you to talk about whether or
12:13:11 15 not these articles are related or unrelated to your work
16 in this case?

17 A. Well, I mean, they're related in that they reflect
18 two of many scientific investigations that I've
19 undertaken, but they're completely unrelated, insofar as
12:13:30 20 the plausibility and -- of my doing a primary survey
21 to -- as the optimal means to estimate the proportion of
22 individuals in the county that have Opioid Use Disorder.

23 Q. Okay. Next question.

24 On interviewing, you were asked did you
12:13:55 25 interview and could you even name any OUD victims.

1 Remember that?

2 A. Yes.

3 Q. Would it change anything you did if you knew the
4 name of an OUD victim in Lake or Trumbull County?

12:14:12 5 A. No.

6 Q. Can you see how interviewing a victim would have
7 changed any of the abatement plans that you made?

8 A. No.

9 Q. Were you challenged on the accuracy of any aspect
12:14:25 10 of your plan by anybody's interview, in any content of
11 any interview?

12 In other words, did they show you an
13 interview of someone that makes you doubt your plan?

14 A. You're asking today or yesterday?

12:14:44 15 Q. Yes. In the cross-examination.

16 A. No, I was not.

17 Q. Have you seen any interviews done by any of their
18 experts that make you feel weak about your plan or
19 question your plan?

12:14:56 20 A. No, I have not.

21 Q. Well, you told the Court in testimony yesterday
22 that you did speak with three individuals in this case
23 versus 21 in Cabell County, remember?

24 A. Yes.

12:15:13 25 Q. Now, these are larger counties.

1 Is it fair to say that they had better
2 people to answer those questions and you felt like you
3 got adequate information or do you feel like you're
4 missing data you need to get?

12:15:26 5 A. I didn't feel like I was missing information.

6 Q. Let's move from plan workup to plan detail, and
7 we'll be done.

8 I don't want the record to reflect that
9 perhaps you did an estimate of an estimate with a target
10 and then an estimate as if it waters down the
11 reliability.

12 You follow me?

13 A. Yes, I do.

14 Q. In other words, you remember the whisper game we
12:15:55 15 play as kids where you whisper to somebody and they
16 whisper to somebody, and by the time it makes it all the
17 way around, you've got all sorts of messes.

18 Right?

19 A. Yes.

12:16:04 20 Q. So my question to you is where you got targets and
21 where you've got estimates, are they reliable?

22 A. Yes, they are.

23 Q. Have you done them in accordance with the expertise
24 and science that your medicine and science has taught
12:16:23 25 you?

1 A. Yes, I have.

2 Q. And when you talked then -- all right. Next
3 subject on your plan detail.

4 You talked about patients receiving
12:16:33 5 treatment, and you were challenged on Plaintiffs' Exhibit
6 23105A, Page 16, Note 2, and let's get that on the
7 screen.

8 Page 16, Note 2, the yearly estimate from
9 40 percent in year one to 60 percent in year 15, and
12:17:08 10 these are your targets for number of people to be
11 treated.

12 Remember?

13 A. Yes. The number of people in any given month that
14 would be receiving treatment.

12:17:23 15 Q. All right.

16 In that regard, I want to make sure that
17 the record is clear.

18 You're talking about 12 months of treatment
19 slots, is that right?

12:17:38 20 A. Yes.

21 Q. So during any set month, the goal would be to have
22 40 percent in treatment in those slots.

23 Fair?

24 A. Yes.

12:17:51 25 Q. And that's true, whether it's the same person for

1 one month, two months, three months in a row, right?

2 A. Yes. During year one.

3 Q. Could be one person one month, they may come back
4 six months later and need it again, right?

12:18:06 5 A. They might.

6 Q. But you want those beds available with the goal of
7 having 40 percent of the OUD numbers being treated each
8 month.

9 Is that what you've set out?

12:18:18 10 A. Yes, based on federal data and, you know, such as I
11 cite to support that input in the redress models.

12 Q. Now, you were asked about various places in your
13 detail where you give various expert opinions.

14 Correct?

12:18:40 15 A. Yes.

16 Q. Are you comfortable with your estimates and goals
17 as informed by your expert opinion?

18 A. Yes.

19 Q. And comfortable is not a good legal word, and
12:18:54 20 Pete's going to correct me when I sit down so I want to
21 fix it now.

22 Are you saying with reasonable scientific
23 and medical certainty that you can say that your
24 estimates and goals are probable, more likely than not?

12:19:13 25 A. Yes.

1 Q. And that is as to the numbers that you believe can
2 be utilizing Drug Courts?

3 A. Yes.

4 Q. Do we want more people in those programs than are
12:19:23 5 in them now?

6 A. Substantially more.

7 Q. Is that true as to where you expect that four
8 police departments will need an L-E-A-D program?

9 A. Yes.

12:19:35 10 Q. Are you saying that you can't fit five into one?

11 A. Well, I provide sources for all of the inputs, and
12 the inputs reflect my best scientific and epidemiologic
13 judgment.

14 Q. And does the same judgment inform your input on the
12:19:53 15 number of needed counselors?

16 A. Yes.

17 Q. If we're going to do this, do you want to
18 shortchange the counseling and the program?

19 A. No. That's -- that's often part of the problem,
12:20:02 20 and it needs to be part of the solution.

21 Q. Did it inform the transportation needs?

22 A. Yes, it did.

23 Q. And if these numbers need to go up or go down, as
24 this is being implemented, would we know that? Would His
12:20:19 25 Honor know that with your recommended annual reviews?

1 A. Well, I don't stipulate a particular cycle for
2 reviews, but I highlight many important measures that I
3 think can be tracked at varying intervals that the
4 counties and Your Honor would be -- have the opportunity
12:20:39 5 to use to make decisions going forward.

6 Q. All right.

7 Then there was a great deal of focus, seven
8 minutes by Mr. Delinsky by my count, on transportation
9 questions.

12:20:49 10 Are you familiar with the term

11 "Micromanaging"?

12 A. Yes.

13 Q. Do you give reasonable funding and options for
14 transportation?

12:21:01 15 A. I believe so, yes.

16 Q. Do you tell the county exactly who needs what kind
17 of ride on what day of the week and how much it's going
18 to cost?

19 A. No. I mean, that sort of effort would collapse
12:21:14 20 under its own weight.

21 Q. Do you leave the means and the methods to the
22 counties?

23 A. Yes.

24 Q. Do you, however, include monitoring, leadership,
12:21:25 25 stewardship, training and roles to make sure this is done

1 responsibly?

2 A. Yes, I do.

3 Q. And again, if His Honor's got an ability to review
4 this annually to see if the transportation's adequate or
12:21:39 5 too much, then that could tweak the model.

6 Is that fair to say?

7 A. Yes, it could.

8 Q. Next.

9 You were told that you, in 4A, do not cite
12:21:55 10 to Dr. Young.

11 I just to want make sure that the record is
12 clear.

13 You gave a report, and these spreadsheets
14 are an appendix to your report.

12:22:06 15 True?

16 A. Yes.

17 Q. And in 4A of your report, you've got a footnote
18 where you say specifically, "Additional testimony and
19 evidence regarding these populations is provided by

12:22:20 20 Dr. Nancy Young in her expert report. I incorporate some
21 of this evidence into my redress models for pregnant
22 women, new mothers and infants."

23 You did say that, didn't you?

24 A. Yes.

12:22:36 25 Q. Next question.

1 NSDUH usage in Rhode Island.

2 Can you explain why you used that number in
3 Rhode Island specifically in the Apollo model?

4 A. Well, I use it in Apollo to estimate the number of
12:22:53 5 individuals with nonmedical prescription opioid use and
6 Opioid Use Disorder, heroin use disorder, but as was -- I
7 had the opportunity to clarify for the record, during a
8 few minutes ago, I don't take the number straight out of
9 NSDUH, and we modify it and we do so appropriately, based
12:23:16 10 on scientific information that demonstrates unequivocally
11 that NSDUH undercounts the population, especially the
12 population with heroin use disorder.

13 Q. So you used Apollo in Rhode Island?

14 A. Yes.

12:23:30 15 Q. If Apollo was just NSDUH, wouldn't you just call it
16 NSDUH?

17 A. Yes.

18 Q. Almost done.

19 The article that had the 6.6 percent,
12:23:57 20 remember the questions on those articles by the lawyer
21 for Walgreens?

22 A. Yes.

23 Q. My whole point is you hadn't seen or used this.

24 You didn't rely on this for the 6.6
12:24:09 25 percent, did you?

1 A. I didn't use the 6.6 percent to estimate the
2 population in question.

3 Q. That's all I wanted to clarify.

4 But as for doctor education, that is an
12:24:25 5 important thing to do, isn't it?

6 A. It's vital.

7 Q. Then the questions on pharmacies and bags for the
8 unused stuff, unused prescription drugs, remember?

9 A. Yes.

12:24:41 10 Q. Now, there's a difference between, for example, a
11 bag being available and a bag being given.

12 True?

13 A. Yes.

14 Q. As His Honor puts together an abatement plan, do
12:25:00 15 you believe it would be useful to order pharmacies to
16 give a bag with every opioid prescription?

17 A. Well, I would want to give that a little thought,
18 but clearly there are, with great ease, one can use the
19 records that pharmacies have to identify patients that,
12:25:21 20 by all means, would be -- it would be smartest to give
21 this to.

22 So, for example, someone just getting six
23 tablets for an ankle sprain which, frankly, is about the
24 number that they should be getting of an
12:25:35 25 immediate-release opioid in an instance where it's

1 indicated, I don't know that a bag would be absolutely
2 vital.

3 But I do think there's an important
4 difference between bags being available and bags being
12:25:48 5 given. And I also would just again say that this is,
6 should by no means be a substitute for concerted efforts
7 to reduce the amount of opioids that are leaving the
8 pharmacies in the first place.

9 Q. All right. Related question.

12:26:04 10 Would it be useful to order that a box had
11 to be in every store that's selling drugs?

12 A. Yes.

13 Q. And then on the photo, did you -- this just is me
14 being a lawyer for a moment.

12:26:19 15 Did you actually have Walgreens' permission
16 to use their logo when you made presentations?

17 A. I did not.

18 Q. I'd keep it off.

19 I'm through, Your Honor. I pass the
12:26:29 20 witness.

21 THE COURT: All right. About how long do
22 you think we'll be?

23 MR. DELINSKY: Your Honor, I don't think
24 I'll be five minutes.

12:26:39 25 I might be five. I can't speak for my

1 other co-defendants.

2 THE COURT: All right. Why don't we --

3 MR. DELINSKY: But I can go, I can finish.

4 Jeff, do you have questions?

12:26:49 5 MR. HALL: Sixty seconds.

6 MR. DELINSKY: I think we can.

7 THE COURT: All right. That's fine.

8 MR. DELINSKY: All right.

9 RECROSS-EXAMINATION OF G. CALEB ALEXANDER

12:26:56 10 BY MR. DELINSKY:

11 Q. We're moving fast, Doctor.

12 You've just been handed what's been marked
13 as CVS MDL 5006, correct?

14 A. Yes.

12:27:21 15 Q. Okay.

16 This is a technical appendix to your
17 redress models and abatement plan in the State of
18 Washington, correct?

19 A. Yes. I believe so.

12:27:29 20 Q. I'm going to show you -- and you can look on Page 5
21 of the document. You set forth your means of estimating
22 the prescription Opioid Use Disorder population, correct?

23 A. Yes.

24 Q. You characterize that population as B4, correct?

12:27:49 25 A. Yes.

1 Q. So B4, the prescription Opioid Use Disorder
2 population, is based on the NSDUH average annual rate of
3 prescription Opioid Use Disorder between 2002 and 2014
4 multiplied by the 2010 Washington population, correct?

12:28:08 5 A. Yes.

6 Q. And that's what you did in Washington, correct?

7 A. I -- yes.

8 Q. Okay.

9 Now, let's move, again, in the spirit of
10 speed, to the Compton article that Mr. Lanier asked you
11 questions about.

12 A. Okay.

13 Q. Okay?

14 And he asked you questions about the Siegal
15 study, correct?

16 A. Yes.

17 Q. About nonmedical use of opioids and the degree to
18 which that may or may not lead to heroin in Ohio.
19 Correct?

12:28:43 20 A. Yes.

21 Q. Okay.

22 But if we go to the second column on that
23 same page, Compton and Jones and the other co-author
24 explain that what they're trying to do in this article is
12:28:58 25 examine whether the findings from these small studies,

1 including Siegal, were consistent with the findings in
2 the broader population of nonmedical users?

3 Correct?

4 A. Yes.

12:29:14 5 Q. Okay.

6 And before we leave that document, all of
7 these studies involving prescription opioids and heroin
8 use involve the nonmedical use of prescription opioids,
9 correct?

12:29:30 10 A. I would need to review the original source studies.

11 Q. The Compton article concerns the nonmedical use of
12 prescription opioids, correct?

13 A. Yes. Yes, it does.

14 Q. Okay. One last area of questioning.

12:29:53 15 The OSAM reports, okay, that Mr. Lanier
16 asked you about, the OSAM reports were not dedicated to
17 Trumbull County, correct?

18 A. Correct.

19 Q. They were not dedicated to Lake County, correct?

12:30:05 20 A. Correct.

21 Q. Reading an OSAM report is not the same as
22 interviewing the Chief Judge of the Lake County Drug
23 Courts and asking that person how many more slots do you
24 need, is it?

12:30:20 25 A. Well, those are -- those are different -- yes,

1 those are -- if you're asking whether those are the same
2 thing, those are different things.

3 Q. Okay.

4 And it's also a different thing from
12:30:31 5 reading the OSAM report to ask the head of the Lake
6 Geauga Treatment Center how many more beds they need,
7 correct?

8 A. Yes.

9 MR. DELINSKY: Okay. Thank you.
12:30:41 10 I have no further questions, Your Honor.

11 MR. HALL: I don't have any, Your Honor.

12 THE COURT: Okay. Ms. Fumerton.

13 MS. FUMERTON: None from Walmart, Your
14 Honor.

12:30:52 15 THE COURT: Okay.

16 MR. LANIER: Can I make one clarification
17 for the record?

18 The Chief Judge of the Lake County Drug
19 Courts, Lake County does not have any Drug Courts.

12:31:02 20 Thank you, Judge.

21 THE COURT: All right. Okay. We'll take a
22 lunch break.

23 Doctor, thank you very much.

24 THE WITNESS: Thank you very much, Your
12:31:10 25 Honor.

1 THE COURT: Have safe travels.

2 (Witness excused.)

3 THE COURT: We will re-assemble at 1:30.

4 Have a good lunch.

12:31:21 5 (Proceedings concluded at 12:31 p.m.)

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1 THURSDAY, MAY 12, 2022, 1:33 P.M.

2 THE COURT: Everyone can be seated and I
3 guess the Government may call its next witness.

4 MR. LANIER: Yes, Your Honor.

13:33:17 5 And as they bring Dr. Burke here, we have
6 decided in the interest of time and the record not to put
7 on the stand our last two witnesses so we will be resting
8 after this.

9 It was a curve ball we threw the
13:33:33 10 defendants. And in talking to the defendants over lunch,
11 if the Court does not mind, the parties would like to
12 take tomorrow off and then we will still finish before
13 the end of next week, but they've got their witnesses
14 lined up to start Monday morning.

13:33:49 15 And it seems to keep that schedule would
16 work with us. If that's okay with the Court. But we
17 want to obviously do whatever the Court feels.

18 THE COURT: Okay. Do you think we will
19 finish with Dr. Burke today?

13:34:02 20 MR. WEINBERGER: Yes.

21 THE COURT: I mean, there may be lengthy
22 cross-examination. So, I mean, we should definitely
23 conclude with him.

24 MR. LANIER: No question. And if he runs
13:34:13 25 over until tomorrow, we run over until tomorrow.

1 THE COURT: All right. So I don't -- I
2 don't have a compelling problem.

3 I do want to finish next week. I mean,
4 although I did -- I could, if I had to, go on to the
13:34:31 5 23rd. It would cause some issues, and I'd rather
6 conclude next week.

7 MR. LANIER: We will be done next week,
8 Judge.

9 THE COURT: Okay.

13:34:37 10 MR. LANIER: You have my word on that.

11 THE COURT: All right.

12 MR. DELINSKY: And, Judge, just to add, it
13 is a little bit of a curve ball. Of course, this stuff
14 happens through trial.

13:34:45 15 THE COURT: Right.

16 MR. DELINSKY: It's through no fault
17 whatsoever, but we just have to think through what this
18 means to the presentation of our case; do we need to, you
19 know, present county evidence of our own or not.

13:34:56 20 THE COURT: I see.

21 MR. DELINSKY: We have to figure it out the
22 answers to those questions. So we'd appreciate the day,
23 Your Honor. And I would just like to reiterate what
24 Mr. Lanier said, we will be done by the end of next week.

13:35:08 25 THE COURT: All right.

1 MR. DELINSKY: Assuming he doesn't conduct
2 the standard Lanier cross-examination.

3 THE COURT: I mean he hasn't used much time
4 on direct so we'll see.

13:35:18 5 All right. We'll go with Dr. Burke.

6 MR. WEINBERGER: Just right up to the
7 witness stand.

8 THE COURT: Hello, Doctor. If you would
9 raise your right hand.

13:36:50 10

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1 JOHN F. BURKE,
2 of lawful age, a witness called by the PLAINTIFFS,
3 being first duly sworn, was examined
4 and testified as follows:

13:36:56 5 THE COURT: Thank you.

6 MR. WEINBERGER: May I proceed, Your Honor?

7 THE COURT: Yes, Mr. Weinberger.

8 DIRECT EXAMINATION OF JOHN F. BURKE

9 BY MR. WEINBERGER:

13:37:27 10 Q. Would you please state your full name.

11 A. Yes, sir. My name is John F. Burke, Jr.

12 Q. Dr. Burke, what is your profession?

13 A. Excuse me?

14 Q. What is your profession?

13:37:37 15 A. I'm an economist.

16 Q. What is the -- what does it mean to be an
17 economist?

18 A. An economist is a social scientist that looks at us
19 people, primarily in terms of how do we earn our living,
13:37:53 20 do we sell our time for a wage or a salary, do we rent
21 out a building or a piece of land, do we get dividends,
22 how do we earn our living, and then how do we turn around
23 and spend that on food, clothing, shelter,
24 transportation, recreation, medicine.

13:38:08 25 Add all those spendings up and it turns out

1 to be called gross national product.

2 Q. Dr. Burke, I have put in front of you a large
3 folder that contains your report, which is marked as P
4 23127. And at Page 389 to 398 is your CV, but I'm going
13:38:39 5 to put it up. I'm going to put your CV up on the Elmo.

6 There's actually two volumes, Dr. Burke.
7 So let's just, if we can just go with the Elmo, your CV
8 starts at Page 389 of that exhibit, and I know you don't
9 need your CV, but why don't you tell the Court a little
13:39:07 10 bit about your background, education, what led you to
11 ultimately your Ph.D. in economics?

12 A. Yes, sir.

13 I grew up in the Boston, Massachusetts
14 area, went to primary and secondary schools there.

13:39:22 15 Right out of high school, I served a tour
16 of duty in the United States Navy where I got my best
17 education.

18 After the Navy, I attended Boston College,
19 getting a degree in economics in 1961. I was then
13:39:37 20 awarded a full scholarship to attend the University of
21 Notre Dame in South Bend, Indiana. Got a Master's Degree
22 from Notre Dame in 1963.

23 And then a Ph.D. doctor of philosophy in
24 economics in 1967.

13:39:51 25 That's my formal education, but I still

1 consider myself to be a student of economics. I'm still
2 reading, I'm still learning, I'm still trying to move up
3 the curve.

13:40:06

4 Q. And have you been a teacher and Professor of
5 economics?

6 A. Yes. Yes, sir.

7 That's what I've done for most of my life.

13:40:17

8 I was a teacher at the University of Notre
9 Dame, a teaching assistant, and then I was an instructor
10 at Indiana University.

11 I then moved down to southern Illinois and
12 taught at East Illinois University for a couple of years.

13:40:32

13 I then moved my family to Cleveland, Ohio,
14 to take a job at what was then a brand new school in
15 Cleveland, Ohio. That first year at Cleveland State. We
16 were teaching in World War II Quonset Huts. Quite a
17 school now.

13:40:49

18 I taught there for 27 years. I retired
19 from full-time teaching. After 27 years at Cleveland
20 State, and with 37 years of public service, they let you
21 count your military time, also, and I was out of the
22 classroom for a couple of years, but then John Carroll
23 University called and I spent 21 years teaching
24 economics, mostly money and banking, at John Carroll.

13:41:05

25 I retired from full-time teaching last

1 year.

2 Q. And, Dr. Burke, do you have a corporation known as
3 Burke Rosen & Associates?

4 A. Yes, that's an Ohio corporation and that's the
13:41:18 5 d/b/a.

6 Q. Okay. And do you practice in the field of
7 economics with Harvey Rosen?

8 A. I do.

9 Q. And how long has that been the case?

13:41:27 10 A. In a formal sense, since 1973.

11 And in an informal sense, since 1967 when I
12 first moved to Cleveland, Harvey Rosen was my roommate at
13 Cleveland State University.

14 We shared an office.

13:41:44 15 Q. And, Dr. Burke, have you, in addition to teaching,
16 have you also served as an expert witness for the last 50
17 years in civil litigation?

18 A. Yes, sir, I have.

19 The first time a lawyer called me, I was
13:42:01 20 living in Illinois and it was 1966.

21 Q. And explain to the Court some of the variety of
22 cases that, in which you've testified. Some that, you
23 know, come to mind as most important or most significant.

24 A. Yes, sir.

13:42:21 25 I testified in a variety of cases, always

1 on economics. I'm never involved in who did what to who
2 or who's right or wrong. I'm just a numbers guy.

3 Some of the cases I've testified in, we
4 worked for Federal Judge Rubin in Cincinnati in the
13:42:39 5 Beverly Hills Supper Club fire, a nightclub that burned
6 down in the Cincinnati, Ohio area.

7 We worked on the Bhopal India case where
8 Union Carbide let some kind of gas or something out into
9 the atmosphere and two or 300,000 members of the Indian
13:42:58 10 state were killed.

11 Worked on the balcony collapse at the Hyatt
12 Regency.

13 Worked on the bankruptcy in Federal Court
14 in Cincinnati of a company that made asbestos products.

13:43:14 15 Worked on the 911 cases in New York City.

16 Worked on the tragedy that happened at
17 Gander when a military flight crashed up there. They
18 later made a Broadway play out of part of that action.

19 Those are some of the cases I've worked on
13:43:40 20 with Harvey Rosen.

21 Q. And have you been a consultant in cases on behalf
22 of both plaintiffs and defendants?

23 A. Yes, sir.

24 But if you get into either personal injury
13:43:52 25 or wrongful death kind of cases, in those kind of cases,

1 it's almost always the plaintiffs' attorney that calls.
2 Defense attorneys seldom call.

3 But you get into other kinds of cases,
4 stock cases or business evaluation cases or
13:44:09 5 discrimination cases or divorce cases, that's more 50/50,
6 60/40.

7 Q. Rather than have you search through the materials
8 for a complete copy of your CV, I'm going to approach
9 you, if I may, and just ask you whether 83127, Pages 389
13:44:31 10 to 398, is an accurate copy of your curriculum vitae?

11 A. Yes, sir, it is.

12 Q. Have you and I worked on cases together in the
13 past?

14 A. Yes, we have, for many years.

13:44:52 15 Q. And you've also served as an economist for other
16 members of my firm going back a number of years?

17 A. Yes, sir, I have.

18 Indeed, I've worked for members of your
19 firm before you were a member of that firm.

13:45:08 20 (Laughter.)

21 Q. So that was just five or six years ago, right?

22 A. Yes, sir.

23 Q. All right. What -- well, let me ask you this.

24 Originally, initially, and including the
13:45:23 25 report that's before you, was authored by your partner,

1 Harvey Rosen?

2 A. Yes.

3 Q. Correct?

4 And last fall, did we ask you to step in

13:45:37 5 his shoes because of medical issues that Dr. Harvey Rosen

6 was suffering from?

7 A. Yes, sir.

8 Q. Can you elucidate that a little bit without getting

9 too much into his privacy?

13:45:50 10 A. Harvey got diagnosed with pancreatic cancer. So

11 far so good.

12 But he was unable to testify. He couldn't

13 come to court, he couldn't appear in a deposition, and

14 Harvey and I worked together on all our cases, and he

13:46:07 15 asked me if I would step in and take over this case for

16 him. And by the way, he did the same thing for me 20

17 years ago when I had bladder cancer.

18 So we go back and forth a lot.

19 Q. All right.

13:46:22 20 The methodology, I'm going to ask you to

21 describe the methodology that was utilized in order for

22 you to come to your opinions in this case, but is the

23 methodology that is used by Burke Rosen used by both of

24 you, both of you in a similar fashion?

13:46:38 25 A. Yes. Not only is it used by both of us, but we've

1 put the methodology together ourselves 40 or 50 years
2 ago, and we together bring up the documents that we need
3 to perform that methodology.

4 Q. All right.

13:46:55 5 So we retained, that is to say Lake and
6 Trumbull County, through counsel, retained Burke Rosen to
7 evaluate the remedy being sought by the counties in this
8 case, correct?

9 A. Yes, sir.

13:47:16 10 Q. And what did -- what were you asked to do?

11 A. We were given a report prepared by a doctor named
12 Caleb Alexander, and we were asked to determine what the
13 cost would be of this remedial project in the Alexander
14 report.

13:47:35 15 We were asked to determine what the total
16 cost would be over a period of about 15 years. And last
17 year, we were asked to determine the present value of
18 that plan, how much money you would need in total last
19 year in order to finance that plan so that you could
13:47:56 20 perform every item in Dr. Alexander's plan.

21 And at the end of the time period, end up
22 with zero money. Do not have a surplus, do not have a
23 deficit.

24 Q. All right. So what is the -- what is it that you
13:48:12 25 did?

1 What's the methodology that you utilized?

2 Obviously, you've told us that you started with

3 Dr. Alexander's redress model for both counties, but tell

4 us the methodology that you went through.

13:48:27 5 A. The methodology is kind of simple. And like

6 everything else when you figure it out, it is kind of

7 simple and it's straightforward.

8 So you really need to know just four pieces

9 of information.

13:48:42 10 One of those pieces of information is how

11 long. In this case, Alexander's report covers 15 years.

12 The second piece of information you need is

13 a starting out point, a starting out cost. Perhaps

14 you're going to hire somebody to perform a service. What

13:49:03 15 is that figure today? What does that figure cost today?

16 Or perhaps it's going to be a procedure, or perhaps it's

17 going to be a drug. What does it cost today? That's

18 step two.

19 Step three is to say what do you anticipate

13:49:15 20 is going to happen to the cost of this item over the next

21 15 years? Is it going to be constant; you know, a

22 thousand dollars this year, next year, next year, next

23 year, 15 years, or is it gradually going to grow from a

24 thousand to eleven hundred, 1300, to 1700, to 2000, or is

13:49:38 25 it going to decline? Is it a thousand now, declining to

1 800, 600, 400, three hundred?

2 So that's step three.

3 What is the growth rate you would apply,
4 positive or negative, to the cost of providing this
13:49:52 5 service or this item or this drug.

6 And the fourth step is to determine what
7 are safe interest rates, what rates of return can you get
8 on your money if you get it today? What can I invest it
9 at in a safe investment? Because this is money that has
13:50:14 10 to be there over a period of time.

11 So I like to say if you stop a random
12 economist on the street, and there's 70 or 80,000
13 economists in the United States, and you say to them you
14 need something for 15 years, it costs \$100,000 per year
13:50:32 15 right now, it's going to grow at a rate of increase that
16 keeps pace with inflation plus two points above, two
17 percentage points above inflation, and you're going to
18 bring it back to present value at the rate of interest
19 you can get on U.S. Government bonds, what's the present
13:50:53 20 value of that sum?

21 Every one of those 70 or 80,000 economists
22 is going to give you exactly the same answer to that
23 question because you gave them the four ingredients that
24 are needed: Time, amount today, growth, discount.

13:51:15 25 Q. All right.

1 Now, we've talked about the redress model
2 that you followed. And let me just for the record
3 identify it as, for Lake County, P 23105A. That's
4 actually under your file here in front of you if you ever
13:51:44 5 need to refer to it.

6 A. Yes, and I have my own copy, too.

7 Q. Okay. And for Trumbull County, it's P 235105 B.

8 Do you recognize these two documents?

9 A. Yes, sir, I do.

13:52:04 10 Q. All right.

11 Now, in addition to the Alexander Monument
12 and analytics redress models, what other sources of
13 information did you have to utilize in order to evaluate
14 the costs from the standpoint of an economist?

13:52:28 15 A. Well, Dr. Alexander's model told us what was needed
16 and also the time period.

17 So that question is answered. Fifteen
18 years.

19 We then went out and looked at the various
13:52:41 20 items that are in that Life Care plan, and just to
21 make --

22 Q. You called it a Life Care plan.

23 A. Well, it's like a Life Care plan. We treated it
24 like a Life Care plan but it's a Life Care plan for a
13:52:54 25 county. It's a Life Care plan to fix a remediation

1 needed in a county, what do you have to do to achieve
2 that.

3 So we looked at the various items. And
4 just, for example, you might need a social worker to
13:53:07 5 perform a service. So we went out and looked up the cost
6 of a social worker.

7 If Dr. Alexander's plan called for two
8 social workers, or one, or a part-time like .3 or two, we
9 went out and looked up the cost of a social worker.

13:53:25 10 We looked that up in the standard
11 industrial classification codes of the United States for
12 two areas, for the Lake County SMSA, which is part of
13 Cleveland, and for the Trumbull County, SMSA, which is a
14 separate, distinct economic area.

13:53:47 15 So that gave us the basis. It might say
16 that social worker is \$100,000. We also then figured out
17 what fringe benefits you might have to pay that worker.
18 We then had to come up with a growth rate. So if we had
19 enough statistics, we would look at what has happened to
13:54:08 20 the cost of social workers.

21 If we didn't have that, we would look at
22 the overall increase in wages for citizens in the United
23 States who are members of the labor force, and then the
24 last step is to go look at the Treasury Department and
13:54:26 25 see what the interest rates are.

1 Q. Okay.

2 Now, originally, Burke Rosen or Dr. Rosen
3 issued a report on April 16th, 2021. And subsequent to
4 that, you gave a deposition in February. I think it was
13:54:47 5 in February of this year.

6 A. Yes, sir.

7 Q. Do you recall that?

8 And both before and after the deposition,
9 did you and Dr. Rosen make some modifications to your
13:55:01 10 report to correct some calculation issues that existed in
11 the first report?

12 A. Yes. We made some mistakes. Those mistakes were
13 pointed out to us. It's always been my policy when you
14 make a mistake, correct it.

13:55:15 15 Q. All right.

16 And so you then issued your report, which
17 has been marked as P 23127, which is actually dated April
18 22nd, 2022?

19 Correct?

13:55:31 20 A. Yes.

21 Q. And after your deposition, did you also add to this
22 report, to each page of the report, an explanation, a
23 more full explanation, as to the sources of material that
24 you used to come to your conclusion on that particular
13:55:54 25 page of the chart?

1 A. Yes, sir. We thought that made it more obvious
2 what we did and how we did it.

3 Didn't change the numbers, but it just made
4 it more obvious. If some other scientist, some other
13:56:07 5 economist wanted to look at it, they would know exactly
6 what we did, how we did it.

7 Q. All right. So let's -- let's go to your report.

8 I'm going to show it. I'm going to show
9 some examples of what you did.

13:56:20 10 So this is the -- this is Page 16 of 232 of
11 your report. It's -- the Bates stamp number is Page 16
12 of the report.

13 And let me see if I can get it a little
14 closer. Okay. There we go.

13:56:40 15 So at the top of this page is listed
16 Schedule 1A1. And by the way, this is from the Lake
17 portion of your report, Exhibit 1-1, entitled, "Category
18 1: Prevention-Reducing Opioid Oversupply and Improving
19 Safe Opioid Use."

13:57:11 20 And that's page 15 -- I'm sorry, yeah,
21 Page 15 of P 23127.

22 Is that correct?

23 A. Yes, sir.

24 Q. All right. So have you organized your report to
13:57:26 25 track the Monument Analytics Caleb Alexander Redress

1 Model Exhibit?

2 A. Yes, sir.

3 Q. And --

4 A. For the most part, we did that. It's not
13:57:40 5 identical, but for the most part, we tracked it exactly.

6 Q. So you did it by category. So, for example, on
7 this particular page that I'm showing, it shows Alexander
8 Monument Analytics Category 1, and it shows all of the
9 subsections or subcategories of it, 1A to 1F, correct?

13:58:01 10 A. Yes, sir.

11 Q. Okay.

12 So then when we go to the very next page of
13 the report, this is entitled "Section 1A1, Showing Health
14 Professional Education Total Cost And Present Value,
13:58:21 15 2021-2035."

16 So explain to us what you did to formulate
17 and create this report. This page of this report.

18 A. Yes, sir.

19 The first column is Alexander's. He laid
13:58:42 20 out the 15 years. So it went from 2021 to 2035.

21 And what he's calling for here is a person
22 to deal with pharmacists. So we looked at and we cite a
23 standard occupational category up there for how
24 much -- how much a pharmacist makes, how much the average
13:59:05 25 pharmacists make.

1 And in 2021, we thought that would be about
2 \$135,865.

3 Now, to arrive at that figure, we looked at
4 that --

13:59:21 5 Q. I'm going to go to the next page.

6 Is that what you're looking at?

7 A. To the next page.

8 Q. So this is -- this also shows Page 16 of 232, as
9 does this first page. And basically this is -- this is
13:59:35 10 the backup information for the first page that I showed
11 you.

12 Correct?

13 A. Yes.

14 Q. All right. So what is --

13:59:45 15 A. So we could get --

16 Q. What did you do?

17 A. We could get data from the year 2019 that said they
18 made about \$126,150.

19 We then had to come up with a growth rate
13:59:58 20 from 2019 to 2021, and that growth rate was initially
21 4.57, but it then declined to 2.99, which is a movement
22 in the -- in prices.

23 And if we make that movement every year,
24 then you go from 126 up to 135. That is our base for the
14:00:25 25 year 2021.

1 And that brings us back to the first page
2 again, and that's where we have that \$135,865 as the
3 starting point.

4 We then calculated fringe benefits. And
14:00:42 5 although there are a lot of fringe benefits out there,
6 that range from legally required fringe benefits to stock
7 options and company cars and expense accounts, we only
8 looked at three of them.

9 We looked at the legally required, which is
14:00:59 10 mostly the employer's contribution to the Social Security
11 trust funds, and we looked at a medical plan. Most
12 companies provide a medical plan. You may put something
13 into the medical plan. Your employer may put something
14 into the medical plan. We looked at the portion the
14:01:20 15 employer put in.

16 And then lastly, there was a category for
17 savings, retirement, which are things like pension funds
18 and 401(k)s and Keogh plans and savings plans, company
19 matches.

14:01:33 20 So that gave us the fringe benefit column.

21 The next column is just those, just Columns
22 2 and 3 added together, and then Dr. Alexander said you
23 didn't need a full-time person doing this all the time
24 2080 hours a year; you only need this person doing this
14:01:57 25 job about a third of the time, .3.

1 So we took .3 of a person and that gave us
2 the next column, which is \$53,310.

3 And last year, the present value and the
4 amount would be the same. But as you can see in the
14:02:17 5 column called "Total Cost," over a period of time in the
6 future, that is going to grow from that 135,000 start,
7 it's going to grow into the future. And then we're going
8 to discount it back to present value.

9 Q. All right.

14:02:35 10 So did you do this same exercise for every
11 one of the categories and subcategories from Monument
12 Analytics, Dr. Caleb Alexander's redress models for both
13 counties?

14 A. Every one. Yes, sir.

14:03:00 15 The only constant was the 15 years. We
16 frequently had to figure out a starting point. We
17 frequently had to figure out a growth rate. And then we
18 used the same discount rates for all columns.

19 Q. And this, this exercise that you went through that
14:03:20 20 led to the production of this report, and particularly
21 these charts that go from Page 14 of your report to
22 Page 349 of your report -- I'm sorry -- to Page 183 of
23 your report, Bates stamp 349 -- let me back up.

24 This report, which is contained in P 23127,
14:04:00 25 Bates stamp 14, through Bates stamp 349, are all charts

1 and tables that you created in similar fashion to the one
2 that we just went through?

3 A. Yes.

4 The methodology is the same in all of them.

14:04:19 5 The numbers are going to be different, but the
6 methodology is the same.

7 Q. Okay.

8 And when you did this, did you reach these
9 opinions that's contained in these charts using a

14:04:35 10 reasonable degree of economic certainty?

11 A. Yes, sir.

12 MR. WEINBERGER: So, Your Honor, at this
13 point, we would move to have admitted into evidence P
14 23127, Bates stamp 14 through 349.

14:05:06 15 MS. FUMERTON: Your Honor, defendants renew
16 their objection to the expert reports coming in
17 wholesale, but we also understand your position
18 yesterday. So we would object but, you know, subject to
19 obviously your ruling.

14:05:19 20 THE COURT: Well, Mr. Weinberger, let's,
21 just so the record is clear, if I'm -- it looks to me
22 like Pages 9, 10, and 11 and 12 are the summaries.

23 Is that right?

24 MR. WEINBERGER: They are the summaries and
14:05:42 25 I intended -- I intended to handle that separately, Your

1 Honor.

2 THE COURT: Well, why don't you have the
3 Doctor just identify, go through those summaries, which I
4 think everything, everything else is basically backup and
14:06:01 5 detail, correct?

6 It's the backup and the detail and
7 explanation for the figures on the summary, Pages 9
8 through 13, correct?

9 MR. WEINBERGER: Yes, Your Honor.

14:06:09 10 THE COURT: All right.

11 Well, why don't you, just so the record is
12 clear, if anyone ever looks at it, there will be
13 testimony on this.

14 MR. WEINBERGER: Your Honor, were you going
14:06:46 15 to say something else?

16 THE COURT: No, I want you to do that so
17 the record is clear.

18 MR. WEINBERGER: Yes.

19 But to be clear, it is -- I understand the
14:06:56 20 importance of the summaries and we will go through those,
21 Your Honor.

22 And it is true that the rest of the report
23 are backup to the summaries, but to the extent that the
24 Court intends to pick or choose, in its discretion, it is
14:07:17 25 important that each of these charts go into evidence,

1 Your Honor, because it deals with each subcategory of the
2 abatement plan.

3 THE COURT: I understand that.

4 So, Doctor, essentially each of these pages
14:07:36 5 refers to an element of Dr. Alexander's plan for Lake
6 County or Trumbull County, and it breaks it down year by
7 year, 2021 to 2035, and it reflects your calculations of
8 the cost per year? Is that right?

9 Each of those, each of those elements of
14:08:04 10 Dr. Alexander's redress plan?

11 MR. WEINBERGER: That is a question for
12 you, Dr. Burke.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay.

14:08:13 15 BY MR. WEINBERGER:

16 Q. All right. So let's go to the summaries.

17 I'm going to show you P 23127. That's
18 Page 9 of your report.

19 Does this contain a summary by category of
14:08:35 20 the cost of the Lake County redress model, both total
21 cost and present value?

22 A. Yes, it does.

23 Q. Okay.

24 And are these figures a summary of the rest
14:08:56 25 of the report and the calculations associated with those

1 for Lake County in the Lake County portion of the report?

2 A. Yes, sir.

3 And they are last year's figures.

4 Q. Right.

14:09:11 5 A. If, if I were to redo this report again now, I
6 would have to use new interest rates because interest
7 rates have gone up.

8 I would also have to use new growth rates
9 because as we all know inflation has soared.

14:09:29 10 So I -- that would add another five percent
11 to the growth side of it.

12 Q. Okay. Understood.

13 Page 23127, Page 10, has a summary table by
14 year of all of these costs for Lake County.

14:09:58 15 Correct?

16 A. Yes, sir.

17 And you can see that present value column.
18 Last year, 2022 was one year in the future. It's no
19 longer in the future. It's the present.

14:10:12 20 So everything in that queue would move up
21 one slot. So the present value of 2022 would not be
22 \$70,000 -- excuse me -- 70,671,000. It would be the
23 total cost figure, 70,904.

24 And everything would move up one slot and
14:10:35 25 would increase.

1 But as I said a minute ago, in addition,
2 we've all seen the figures on inflation coming out at 8.3
3 percent yesterday. That would cause all of these figures
4 in the future to grow even faster than Harvey and I had.

14:10:53

5 Q. Okay.

6 And similarly for Trumbull County, Page --
7 23127, Page 11, is this a summary by category of all of
8 the redress model subcategories, the cost of them, as
9 you've calculated them, both in terms of total cost and
10 present value?

14:11:21

11 A. Yes, sir.

12 And it matches up with the approach we used
13 in Lake County, and you can see the headers are the same.

14 Q. Okay.

14:11:30

15 And then with respect to Page 12, Bates
16 stamp Page 12 of this exhibit, is this the summary by
17 year for Trumbull County?

18 A. Yes, sir.

19 MR. WEINBERGER: Your Honor, I would move
20 to --

14:11:47

21 THE COURT: I would like to know what
22 specifically is the defendants' objection to admitting
23 the report is.

24 MS. FUMERTON: Your Honor, to be clear, we
25 don't have an objection to the summary tables. And so to

14:11:55

1 the extent --

2 THE COURT: Obviously the summaries are in,
3 Ms. Fumerton, but I mean the backup explains, you know,
4 element by element, year by year.

14:12:07 5 So, I mean, the summary just by itself, I
6 mean, we're not going to be here for 20 years having
7 Dr. Rosen going through line by line in the record of
8 each of these calculations.

9 That would be crazy, wouldn't you agree?

14:12:25 10 MS. FUMERTON: Well, I'm not sure I would
11 put it that way, Your Honor, but I think that to the
12 extent Your Honor is asking whether we can --

13 THE COURT: I guess I want to know why
14 you're objecting to admitting Dr. Burke and Rosen's
14:12:38 15 report, which is really simply mathematics.

16 MS. FUMERTON: Sure, Your Honor.

17 To the extent that it is -- we're being
18 asked to admit the various parts and the years, we're not
19 going to -- well, subject to what the other defendants
14:12:53 20 think, I don't want to speak for them, but we won't
21 object to that. But we do want to preserve a general
22 objection to expert reports coming in whole cloth.

23 THE COURT: Fine. I'm talking about this
24 one, which is really just --

14:13:04 25 MS. FUMERTON: So, Your Honor, I think,

1 again, subject to one of the other defendants' --

2 THE COURT: If anyone has a principled
3 objection to admitting all the backup pages, I'd like to
4 hear it.

14:13:18 5 MS. HACKER: Your Honor, Walgreens has no
6 objection to the pages plaintiffs offer, which is, I
7 believe, Pages 9 through 349.

8 THE COURT: Okay. Thank you.

9 MR. DELINSKY: Your Honor, CVS takes the
14:13:33 10 same position.

11 THE COURT: Okay. Thank you.

12 It can be admitted.

13 MR. DELINSKY: But, Your Honor, with the
14 same caveat I articulated yesterday with regard to expert
14:13:41 15 materials, which is not for the truth of the matter
16 asserted but as support for the analysis.

17 THE COURT: If you think that Dr. Rosen and
18 Dr. Burke made mathematical errors, you can point them
19 out. Absolutely. It just reflects exactly what they
14:13:55 20 did.

21 Fine. All right.

22 MR. WEINBERGER: Your Honor, I pass the
23 witness.

24
14:14:08 25 MS. FUMERTON: Your Honor, if I may just

1 have one minute to get set up.

2 THE COURT: Okay.

3 CROSS-EXAMINATION OF JOHN F. BURKE

4 BY MS. FUMERTON:

14:16:13 5 Q. Good afternoon, Dr. Burke.

6 Can you hear me okay?

7 A. I can. Thank you.

8 Q. My name is Tara Fumerton, and I am one of the
9 attorneys for Walmart in this case.

14:16:20 10 As you testified earlier, you are here to
11 testify about the report that was originally rendered by
12 your colleague Dr. Rosen, right?

13 A. Yes, ma'am.

14 Q. And in taking over for your colleague, Dr. Rosen,
14:16:38 15 you've reviewed all the materials that Dr. Rosen relied
16 upon in forming his opinions, right?

17 A. Yes, ma'am.

18 And I worked with Dr. Rosen as he was
19 putting the report together, but he did the work.

14:16:51 20 Q. And so for the document that has been admitted as
21 Plaintiffs' Exhibit 23127, you've adopted that report and
22 opinions as if they're your own, correct?

23 A. Is 23147, is that the Alexander report?

24 Q. I might have -- no, no, no. It's 23127. It's this
14:17:13 25 report here.

1 A. Oh, that's our report.

2 Yes.

3 Q. That's your report?

4 A. Yes.

14:17:17 5 Q. And you've adopted that as your own?

6 A. Yes.

7 Q. Correct?

8 So during the course of my questioning
9 today, I'm going to be asking you questions about that
10 report and your opinions.

14:17:28

11 A. Yes.

12 Q. And your work relating to the same.

13 And just to make things easier, when I'm
14 discussing the report and your opinions and your work,
15 I'm not just referring to you personally; I'll also be
16 referring, when I say you, I also mean whatever work
17 Dr. Rosen and other associates at Burke Rosen have done.

14:17:38

18 Does that make sense?

19 A. It does. We're kind of interchangeable.

14:17:54 20 Q. Okay. So with that out of the way, let's get
21 started.

22 Just to be clear, you weren't asked as part
23 of your assignment in this case to come up with a plan to
24 abate the oversupply of prescription opioids in Lake and
14:18:07 25 Trumbull Counties, correct?

1 A. Say that again, please. Sorry.

2 Q. I'll slow down a little bit, too. Sometimes I talk
3 a little fast.

4 You weren't asked as part of your
14:18:16 5 assignment in this case to come up with a plan to abate
6 the oversupply of prescription opioids in Lake and
7 Trumbull Counties?

8 A. Correct.

9 Q. And you have no expert opinion about what a plan
14:18:25 10 should look like, right?

11 A. Correct. I don't hold myself out as knowledgeable
12 in that area. I've seen hundreds of them, maybe
13 thousands, but I'm not an expert in that area.

14 Q. And so when it comes to what policies and programs
14:18:39 15 are appropriate to abate the oversupply of prescription
16 opioids in Lake and Trumbull Counties, you don't have an
17 expert opinion one way or the other as to what those
18 should be?

19 A. You're correct.

14:18:50 20 Q. Right?

21 You said you're a numbers guy.

22 A. I'm a numbers guy, yes.

23 Q. Your expertise is limited to calculating the costs
24 of the plan that Dr. Alexander is proposing, correct?

14:19:02 25 A. That's what I was -- that was my assignment in this

1 case, yes.

2 Q. Okay. So I want to talk a little bit more
3 specifically about how you went about calculating those
4 costs.

14:19:10 5 So your starting point was Dr. Alexander's
6 abatement plan, correct?

7 A. Yes.

8 Q. And, in fact, for the most part, the computations
9 that you make in your report rely on the inputs provided
14:19:26 10 by Dr. Alexander, correct?

11 A. Yes.

12 Q. Those include inputs that describe the scope of
13 different services and programs under his proposed
14 abatement plan, right?

14:19:37 15 A. Yes.

16 Q. And so just as one of the examples, and we'll be
17 looking at some more specific schedules later, but for
18 the number of individuals that he estimates to have
19 Opioid Use Disorder to receive Buprenorphine treatment,
14:19:55 20 you used the inputs of those number of individuals that
21 Dr. Alexander gave you, correct?

22 A. Yes.

23 Q. And those inputs from Dr. Alexander also include,
24 in some cases, the cost of different services and
14:20:11 25 programs under the proposed abatement plan, right?

1 A. Yes.

2 Q. So sticking with the same example of the average
3 monthly cost for an individual to receive Buprenorphine
4 treatment, with respect to that cost, that's something
14:20:27 5 that you relied on to be provided by Dr. Alexander,
6 correct?

7 A. Yes.

8 Q. And with respect to all of these different inputs
9 that are included in Dr. Alexander's report, you took
14:20:39 10 those inputs as facts and assumed them to be true, right?

11 A. I took them as a posit, yes.

12 Q. You didn't undertake any effort to validate those
13 inputs, correct?

14 A. You are correct, no effort.

14:20:52 15 Q. And you have no opinion as to whether those inputs
16 are accurate or reliable?

17 A. You're correct again.

18 Q. Right?

19 So to the extent that Dr. Alexander
14:21:04 20 included inputs that were incorrect, your estimate of
21 abatement costs would likewise be incorrect, true?

22 A. I wouldn't use that terminology, but if
23 Dr. Alexander changes his report, my report is going to
24 change correspondingly.

14:21:21 25 If you ask me how much is two and two and I

1 say four, and you say ah-hah, I meant to say three and
2 three, so you're wrong, no, I'm not wrong. Two and two
3 is still four.

4 Q. The math would still work out?

14:21:34 5 A. The math would still work out.

6 But if Alexander changes his report, I am
7 going to change right along with him.

8 Q. Or with the example we've already been using, the
9 number of individuals to receive Buprenorphine treatment,
14:21:48 10 if the Court determines or other folks determine

11 that -- suggest that that number's incorrect, and that
12 that number of individuals needs to change, your total
13 abatement cost would change as well, correct?

14 A. Yes, it would.

14:22:01 15 And it would probably change
16 proportionately. So if it is determined that
17 Dr. Alexander used X and he should only use half X, then
18 my report shows the value for providing X.

19 But if you only need half X, you take my
14:22:20 20 figure and divide it by two.

21 Q. And that would probably depend on the specific
22 schedule at issue, is that fair?

23 A. Of course it would. Yes.

24 Q. And you heard the expression "garbage in, garbage
14:22:32 25 out," right?

1 A. Say again.

2 Q. Garbage in, garbage out?

3 A. Garbage in, garbage out works in all areas. Your
4 clients give you bad information, you can probably stand
14:22:40 5 up in court and make a bad legal statement.

6 Q. And same if you had gotten bad information for
7 estimating the costs of the abatement plan, your estimate
8 would also likewise be inaccurate?

9 A. Absolutely correct, counselor. Yes, you're right.

14:22:55 10 Q. So if Dr. Alexander included a component in his
11 plan that was not necessary to abate the public nuisance
12 the jury found, then that component also should not be
13 included in your cost estimate, right?

14 A. And I assume you talked to or cross-examined
14:23:11 15 Dr. Alexander, and you got him to remove that from his
16 plan. And if you tell me what it is, I will remove it
17 from my plan.

18 But I can't remove it on my own. I need
19 Dr. Alexander to change his opinion.

14:23:26 20 Q. And likewise, if the Court were to find that a
21 portion of Dr. Alexander's plan was not necessary, that
22 would also reduce your costs, correct?

23 A. I'm married to a Judge. I've learned not to argue
24 with them a long time ago.

14:23:40 25 (Laughter.)

1 Q. Yes, sir. So just, I think we're on the same page
2 but I just want to make sure that it's very clear, if
3 Dr. Alexander overstated the OUD population that needed a
4 particular abatement service like treatment, then your
14:24:00 5 estimate of abatement costs would likewise be overstated?

6 A. Yes. And proportionately.

7 So if he overestimates by 10 percent, my
8 figures are going to be overestimated by 10 percent.

9 Q. And if Dr. Alexander likewise overstated the
14:24:17 10 duration of a particular abatement service, such as the
11 length of a particular OUD treatment, then your estimate
12 of abatement costs would likewise be overstated, correct?

13 A. Yes, ma'am.

14 Q. And I just had a couple questions about something
14:24:31 15 that Mr. Weinberger had asked you about.

16 If you go back to the summary pages --

17 A. If I what?

18 Q. The summary pages. I'll direct you to the specific
19 page.

14:24:44 20 A. Yes.

21 THE COURT: I think these are Pages 9
22 through 13, Doctor.

23 THE WITNESS: Thank you, Your Honor.

24 A. Yes.

14:24:57 25

1 BY MS. FUMERTON:

2 Q. And I would put these up but actually mine suffered
3 the same fate as Mr. Delinsky. I have writing all over
4 mine.

14:25:04 5 But let's take, for example, the Summary
6 Table 2 for Lake County, and that's on Page 10 of what's
7 been marked as Plaintiffs' Exhibit 23127. I'm only
8 trying to cover up my writing.

9 You had mentioned that if given sort of the
14:25:46 10 lag in time, through nobody's fault of your own, that you
11 think these would all sort of need to be moved up and the
12 costs would be increased, is that right?

13 A. They would move up one space in the queue, yes.
14 Because you can't go into a bank today and say, "I want
14:26:03 15 the interest I would have gotten if I had put this money
16 in an account last year."

17 They're not going to do that.

18 Q. But that would be assuming all the inputs are also
19 the same.

14:26:12 20 So, for example, if the number of
21 individuals who needed OUD treatment had decreased from
22 the year prior, then your numbers would similarly need to
23 be adjusted so it might not necessarily be a total
24 increase, correct?

14:26:25 25 A. Yes.

1 If Dr. Alexander finds that the number has
2 decreased, I'm going to change my report accordingly.

3 Q. So you would need to do more than just simply
4 adjust these numbers; you would also have to look to see
14:26:36 5 whether or not all the other inputs should change,
6 correct?

7 A. Yes.

8 And it's my experience that if you look at
9 medical costs last year for all these different kind of
14:26:45 10 items, the base is going to be bigger this year. Things
11 go up.

12 Q. Sometimes they do and sometimes they go down,
13 though, correct?

14 A. Sometimes they go down, but most prices in
14:27:00 15 economics go up.

16 Q. But you have no opinion and no knowledge one way or
17 the other as to whether or not, for example, the number
18 of individuals who have OUD has gone up or down since
19 last year, correct?

14:27:10 20 A. You're right, I have no opinion.

21 THE COURT: Doctor, Mr. Weinberger didn't
22 ask you, like, what discount rate you used, what interest
23 rate you assumed.

24 I would be -- I'm curious to know. It may
14:27:39 25 be it's probably somewhere in your report, but I didn't

1 note it down. So I would just be curious what you used.

2 THE WITNESS: Last year when we prepared
3 this report, we checked with the United States Department
4 of the Treasury, and short-term Treasury instruments were
14:28:03 5 returning at that time about a third of a percent, .33.

6 So we used .33 for about the first four
7 years of our study.

8 We then looked at longer term instruments,
9 and that's called a yield curve. And usually in a yield
14:28:23 10 curve, interest rates go up as maturity increases. So we
11 increased our rate of interest according to the Treasury
12 to 1.38.

13 And then as we pushed out even further, for
14 the last five years, that yield curve -- again, longer
14:28:44 15 term maturities, higher interest rates -- we used 2.36.

16 I looked them up again this morning, and
17 interest rates have gone up. The interest rate on a
18 one-year instrument is now 1.99; a two-year instrument,
19 2.66; a three-year instrument, 2.81; five-year
14:29:04 20 instrument, 2.89; a seven-year instrument, 2.94; and a
21 10-year instrument, 2.91.

22 Interest rates have gone up.

23 THE COURT: Thank you.

24 MR. WEINBERGER: Your Honor, did you want
14:29:23 25 to know the discount rates that were used, also?

1 THE COURT: Well, I assume it extrapolates
2 off this.

3 MR. WEINBERGER: Okay.

4 THE COURT: I was more interested in sort
14:29:31 5 of the interest rates.

6 Thanks.

7 BY MS. FUMERTON:

8 Q. Dr. Burke, in addition to relying on the cost
9 inputs that were set forth by Dr. Alexander, you also
14:29:43 10 provided some of your own cost estimates for certain
11 services and programs under the plan.

12 Correct?

13 A. Yes.

14 Q. And I think you looked at one of those with
14:29:53 15 Mr. Weinberger, the cost of a pharmacist, correct?

16 A. Yes.

17 Q. And that's because Dr. Alexander didn't provide
18 that cost, right?

19 A. Correct.

14:30:01 20 Q. And so in that case, you provided the initial input
21 for the cost of a pharmacist based on a median wage
22 data -- I'm sorry -- based on median wage data from the
23 Bureau of Labor Statistics, right?

24 A. Yes.

14:30:15 25 Q. And that's just one example of the type of initial

1 cost input that you provide in your report, correct?

2 A. Yes.

3 Q. And we're going to look at a lot of other examples
4 later, but I want to sort of set the stage a little bit
14:30:29 5 here of what you did use.

6 So in estimating the costs of services and
7 programs under Dr. Alexander's abatement plan, you did
8 not review any budgets for Lake County departments or
9 agencies, correct?

14:30:42 10 A. Correct.

11 Q. You also did not review any budgets for Trumbull
12 County departments or agencies, correct?

13 A. Correct.

14 Q. You, likewise, did not review any financial
14:30:53 15 statements for either Lake or Trumbull County or any of
16 their departments or agencies, right?

17 A. Yes.

18 Q. You didn't review any books or records from Lake or
19 Trumbull County or any of their departments or agencies,
14:31:05 20 correct?

21 A. You're right.

22 Q. And the same is true for third parties in Lake or
23 Trumbull County, such as treatment centers; you did not
24 review any of their budgets, expenditures, financial
14:31:18 25 statements, or books and records?

1 A. You're right.

2 Q. In addition to not reviewing Lake or Trumbull
3 County's records, you also didn't communicate with any
4 Lake or Trumbull County officials or employees in
14:31:32 5 connection with preparing your report, correct?

6 A. Not many.

7 We had -- Harvey had a couple of
8 conversations with some people, but not many.

9 Q. Okay.

14:31:39 10 And are you aware of whether or not those
11 conversations resulted in any specific inputs in your
12 report?

13 A. No, I'm not.

14 Q. And you did not, in forming your opinions,
14:31:51 15 communicate with any officials or employees of third
16 parties that provide programs or services in Lake or
17 Trumbull County to address opioid abuse and misuse,
18 correct?

19 A. Right.

14:32:04 20 My assignment was to cost out the program
21 set up by Dr. Alexander.

22 Q. But in doing that cost estimate, you didn't look at
23 any Lake or Trumbull County-specific documents, correct?

24 A. Correct.

14:32:19 25 Q. And also in creating your estimates, you did not

1 speak with anyone in the counties regarding what services
2 or programs the counties currently provide that may be
3 the same or similar to services or programs under
4 Dr. Alexander's plan?

14:32:34 5 A. You're right. That's not part of Alexander's plan.

6 Q. And similarly, you, in estimating the cost of
7 services and programs under the abatement plan, did not
8 consider what the counties or their agencies or
9 departments currently spend on similar services and
10 programs, correct?

11 A. You're right.

12 Q. Nor did you consider what the counties or their
13 agencies or departments have historically spent on
14 similar services and programs, correct?

14:33:04 15 A. I think you're right.

16 I know you're right, but there's no history
17 here, is there?

18 Q. But you never asked, so you don't know one way or
19 the other, correct?

14:33:17 20 A. I do know one way or the other.

21 I don't believe there was an opioid;
22 epidemic in 1930 or 1940 or 1950, '60. There's no
23 history here to look at.

24 Q. Well what about the year before you did your
14:33:30 25 report?

1 A. There's not much history. There's history but it's
2 not much.

3 Q. And did you, for the year before or the year before
4 that or the year before that, look at any of the
14:33:39 5 historical costs?

6 A. No, I did not.

7 Q. And you're not offering any expert opinion today as
8 to when the opioid crisis started, correct?

9 A. I am not.

14:33:56 10 Q. When you were estimating the costs for different
11 types of personnel, you did not speak with the counties,
12 their agencies or departments or third parties that
13 employ similar workers and ask them what they pay those
14 workers, right?

14:34:07 15 A. You're correct. I looked at the statistics for the
16 standard metropolitan statistical area.

17 Q. And you mentioned earlier fringe benefits, that
18 that's something that you included when you were
19 estimating the cost for employing different types of
14:34:31 20 workers, correct?

21 A. Yes.

22 Q. And in estimating the cost of those fringe
23 benefits, you didn't distinguish between different
24 positions or roles, correct?

14:34:40 25 A. Say again.

1 Q. You did not distinguish between different positions
2 or roles?

3 A. You're correct, I did not.

4 Q. And so if you calculated fringe benefits to be
14:34:54 5 26.74 percent of a person's annual wage or salary across
6 the board, right?

7 A. Right. That's a national average from the
8 Department of Labor.

9 Q. Okay.

14:35:03 10 And so in other words, you assumed that for
11 all the workers called for under Dr. Alexander's plan,
12 they would receive those fringe benefits, right?

13 A. I did.

14 Q. And you did not investigate or ask the counties or
14:35:16 15 their agencies or departments if, when they would employ
16 these workers, whether they would typically provide such
17 fringe benefits, correct?

18 A. You are correct, but I think the counties are
19 obliged to apply those fringe benefits.

14:35:34 20 Q. Well --

21 A. If some workers, if you're a full-time worker and
22 there are fringe benefits, you have to get them. You
23 can't discriminate.

24 Q. So great example. So you didn't distinguish
14:35:45 25 between whether an employee was going to be a full-time

1 employee or a part-time employee. In fact, the first
2 example you looked at was .3 of a pharmacist?

3 A. Right. But first of all, I know .3 of a person
4 does not exist. So it's got to be one person who spends
14:35:59 5 about a third of their time doing this job.

6 But you have to pay the fringe benefits for
7 the whole person, not .3 of a person. That's the cost
8 allocated, but the fringe benefits apply to the whole
9 person.

14:36:12 10 Q. Well, but at least some of the workers that, under
11 Dr. Alexander's proposals, they're not full-time,
12 correct?

13 A. If they're not full-time, if you're less than 30
14 hours, then they let you get away without providing them
14:36:23 15 some fringe benefits.

16 But there are some fringe benefits that are
17 legally required.

18 Q. And I'm not trying to fuss with that.

19 I'm just trying to make clear that you just
14:36:34 20 applied the same rate across the board and didn't
21 distinguish between the number of hours that an employee
22 would be working, correct?

23 A. You're correct.

24 Q. And so when we're talking about costs, I want to
14:36:46 25 talk a little bit about need.

1 And in estimating the costs of hiring these
2 different kinds of workers, you didn't speak with the
3 counties, their departments, their agencies or the third
4 parties in the counties who employed these workers to see
14:36:58 5 if they actually needed any additional workers that
6 Dr. Alexander was proposing, correct?

7 A. You're right.

8 I looked at the statistics for the area,
9 and that includes all those workers you just mentioned.

14:37:11 10 Q. And you looked at those statistics -- okay.
11 Correct.

12 And so you took, as posit, if Dr. Alexander
13 was proposing a particular worker, you did not
14 investigate whether the county actually needed that
14:37:25 15 worker, correct?

16 A. You are correct again.

17 I looked at Dr. Alexander's report.

18 Q. Okay. I want to talk about some specific programs
19 and I'm going to try to not be clumsy about this. But
14:37:40 20 going back and through the reports, I might be.

21 You have a copy of your report in front of
22 you, correct?

23 A. I do.

24 Q. And you have a copy of the two redress models as
14:37:48 25 well for Lake and Trumbull County?

1 A. The Alexander reports?

2 Q. Specifically, I'm referring to these.

3 A. Yes. Yes, I do.

4 Q. Could you please turn to what is Page 124 of your
14:38:26 5 report, P 23127? And I have it up on the screen as well.

6 A. Page 124?

7 Q. Yes.

8 And so it's 124 of the document that's been
9 marked as P 23127. It's your original report, it would
14:38:44 10 be Page 71, but I think it's easiest if we stick with the
11 P numbers. I can show you how it looks on the bottom.
12 Or maybe not.

13 There you go.

14 I also have a copy that I can give you if
14:39:00 15 that's easier.

16 A. Could I see the bottom of that page you have,
17 please?

18 Q. Yes. Unfortunately, I have a little --

19 A. That's not Page 124. That's Page 71.

14:39:30 20 Q. So I'm looking at the numbers at the bottom because
21 the backup that was added to this, I think it might be
22 easier for us to talk about that.

23 Which copy do you have in front of you?

24 Would it just be easier if I just gave you a copy?

14:39:42 25 A. I have the April 22nd, 2022.

1 Q. And do you have something that looks like this, has
2 this little sticker on it?

3 A. Yes.

4 Q. That's the version I want you to look at.

14:39:51 5 A. Okay. So what page do you want?

6 Q. So 124. If you go down to the very bottom
7 right-hand corner.

8 A. Page 124.

9 Q. And if it's easy, it's a Schedule 3A, Public
14:40:07 10 Safety, specifically 3A Law Enforcement Assisted
11 Diversion.

12 A. Let me catch up with you.

13 Q. Yeah.

14 A. Okay. I have Page 124 and it's 2A.

14:40:26 15 Q. Do you have in front of you the same thing that's
16 on that screen?

17 Dr. Burke, would it help if I approached
18 you with a copy of what I'm looking at?

19 A. No. Which county are you in?

14:40:51 20 MR. WEINBERGER: It's Page 71 of your
21 report.

22 MS. FUMERTON: And, Your Honor, do you have
23 a copy of this exhibit in front of you? We can give you
24 one as well.

14:40:59 25 THE COURT: No, I can use the screen and I

1 have my big copy. I can see fine on the screen.

2 MS. FUMERTON: Your Honor, may I approach
3 the witness?

4 THE COURT: All right. Fine.

14:41:24 5 MR. WEINBERGER: I've got it right here.

6 MS. FUMERTON: Okay. Try to make this a
7 little easier.

8 (Discussion had off the record.)

9 BY MS. FUMERTON:

14:41:57 10 Q. All right.

11 Dr. Burke, I promise. I hope we're going
12 to get into a rhythm here so this won't be this
13 difficult, but once we get on the same page literally.

14 Are you there?

14:42:06 15 A. I am there.

16 Q. Okay.

17 So on this page, which was as you point out
18 71 of 232, or in the Bates stamp at the bottom, Page 124,
19 you are calculating an initial cost for L-E-A-D programs,
14:42:29 20 also refer to as LEAD programs, to be established by
21 police departments, correct?

22 A. Yes.

23 Q. And you did not ask Lake or Trumbull Counties
24 whether they currently operate LEAD programs or what it
14:42:43 25 cost them to do so, correct?

1 A. Correct.

2 Q. Instead, you used a cost from a 2015 University of
3 Washington article that your colleague, Dr. Rosen, had
4 found, right?

14:42:54 5 A. Yes.

6 Q. And we can see that if we just look down here at
7 Notes and Sources that I highlighted, correct?

8 A. Yes.

9 And it's footnoted on the next page, too.

14:43:08 10 Q. Just so the record's clear, you're talking about
11 125. And again, we have the same article.

12 A. Yes.

13 Q. And specifically at Page 16, correct?

14 A. That's our source.

14:43:17 15 Q. Okay.

16 So just so we're all on the same page, we
17 have the year in the first column, correct?

18 A. Yes.

19 Q. Then we have the LEAD programs to be established
14:43:36 20 for police departments. And you have 4.8 listed here for
21 each year, correct?

22 A. Yes.

23 Q. And for the source of 4.8, that's one of the inputs
24 that you took as posit from Dr. Alexander, correct?

14:43:48 25 A. Yes.

1 Q. And so when you were then estimating the cost to
2 establish a LEAD program for a police department, you
3 went to the University of Washington article, and I guess
4 if we want to see the full methodology you started over
14:44:06 5 here, you've got a figure from that, and then you added
6 various growths to get the 30,000 figure here.

7 Then if we go back to the next page, you
8 included it here, correct?

9 A. Yes.

14:44:24 10 Q. And then you multiply that figure times 4.8 LEAD
11 programs?

12 A. Yes.

13 Q. You have an annual growth rate that we have listed
14 here and you give the total estimated cost, correct?

14:44:33 15 A. Yes.

16 Q. So first question, on this schedule, are you
17 estimating that you will be creating 4.8 LEAD programs
18 for Lake County each year so that there will be at the
19 end of the 2035, approximately 75 programs?

14:44:55 20 A. That's what Dr. Alexander said.

21 Q. Do you know how many police departments are in Lake
22 County?

23 A. No.

24 Q. But you understood that Dr. Alexander wanted to
14:45:10 25 establish 4.8 each year?

1 A. Yes.

2 Q. And the cost to establish one would be \$30,061,
3 based on your calculations, correct?

4 A. Yes.

14:45:20 5 Q. And if Dr. Alexander had only intended to calculate
6 a total of 4.8 LEAD programs in Lake County, you would be
7 double counting for all these or more than double
8 counting, you'd be adding up all sorts of additional
9 costs, correct?

14:45:38 10 A. Yes. If that's what Dr. Alexander intended.

11 But if that's what he intended, I don't
12 think he would have put down 4.8, 4.8, 4.8 for each year.

13 I think he's saying this is what is needed
14 to remediate this problem.

14:45:53 15 Q. Okay. And let's just quickly look at that
16 University of Washington article that Dr. Rosen used for
17 his calculations.

18 And so --

19 MS. FUMERTON: Jason, can you hand up
14:46:31 20 what's been marked as Defense Exhibit MDL 14900?

21 Thank you.

22 BY MS. FUMERTON:

23 Q. Dr. Burke, is this the article from which you
24 took --

14:46:58 25 A. Yes.

1 Q. -- the cost for the LEAD program? Yes?

2 You could see it states here University of
3 Washington with the date of June 24th, 2015.

4 If we look back at your cite on Page 125,
14:47:15 5 it's the same cite, correct?

6 A. Yes.

7 Q. Okay. And it actually specifically says Page 16,
8 you should find this figure, correct?

9 A. Yes.

14:47:23 10 Q. So if we go to Page 16, we'll see that the cost for
11 establishing the program is \$24,275, correct?

12 A. Yes.

13 Q. And that, in fact, matches your cost over here --

14 A. Yes.

14:47:47 15 Q. -- of 24,000, right?

16 A. Yes.

17 Q. And if we look at the Washington article, after
18 initially creating the program, the cost goes drastically
19 down, correct?

14:47:58 20 A. The cost per person goes down.

21 Q. Right.

22 A. Not the cost.

23 Q. And --

24 A. I mean if there's 10 million people in this
14:48:05 25 program, you've got to pay \$532 for each one of 10

1 million people. Costs go up.

2 Q. Okay.

3 A. You have to know how many people are being served.

4 Q. And so how many -- that's what I'm trying to

14:48:17 5 understand your calculations.

6 So how many people, going back, let's just
7 see what you took. We agree you took this 24,275 figure,
8 correct? Because that matches your input here.

9 A. Yes.

14:48:29 10 Q. Okay. Now, put this aside for a second.

11 You then come up with the 2021 cost of
12 \$30,061.25, correct?

13 A. Yes.

14 Q. And that's what you input here?

14:48:44 15 A. Yes.

16 Q. Okay.

17 But then you just keep using that same
18 input, which is the initial cost over and over and over
19 again, correct?

14:48:51 20 A. Yes.

21 Q. Nowhere in your calculations do you try to assess
22 how many people will be served, correct?

23 A. Say again.

24 Q. Nowhere in your calculations do you try to assess
14:49:01 25 how many people will be served, correct?

1 A. Oh, I don't know how many people are going to be
2 served. And apparently, Dr. Alexander didn't know
3 either.

4 But he said this is the capacity, this is
14:49:11 5 the amount of people you have to have available to
6 perform this service. And like anything else, if you
7 have to rent a space and it costs a thousand dollars a
8 month to rent the space, and you only serve one person,
9 then the cost per person is a thousand dollars' worth of
14:49:32 10 rent. Serve two people, it's only \$500. Serve three,
11 and it's only 333.

12 Those costs are going to go down as you
13 serve more people.

14 So to answer this question, we have to
14:49:44 15 know -- and apparently nobody does. I don't -- how many
16 people are being served in that chart you just showed me
17 where the costs decline. You expect costs to decline.
18 It's called an economy of scale.

19 Q. And you didn't take that into consideration when
14:49:59 20 you were assessing what the costs of establishing 4.8 --

21 A. Oh, I had the costs of establishing it.

22 Dr. Alexander gave me the cost of
23 establishing it; 24,275. And a lot of those costs are
24 fixed costs.

14:50:14 25 You need to rent someplace, you need

1 machinery, you need equipment. The only cost that might
2 be variable is the labor costs associated with it.

3 Q. Right. I appreciate, but that's all hypothetical,
4 right, as far as what -- you don't know -- all you did
14:50:31 5 was take this 24,275 figure, which is --

6 A. That's all I did and that's all I had to do because
7 I didn't have the other figure to say how many people
8 were being served.

9 If you know how many were being served,
14:50:46 10 then you multiply that figure you have at the bottom
11 there, 532, by the number of people.

12 Q. And that's what you would need to be able to
13 accurately estimate these costs, correct?

14 A. Say again.

14:50:58 15 Q. That's the figure you would need to be able to
16 accurately estimate these costs, correct?

17 A. Yes.

18 Q. Okay.

19 A. But Dr. Alexander also, in other places in his
14:51:08 20 report, I think has said that the number of people that
21 need help in Lake County and Trumbull County.

22 Q. Well, we can look at what Mr. -- Dr. Alexander
23 said.

24 You have the redress model for Lake County?

14:51:21 25 A. Yeah.

1 Q. That's P 23105A?

2 A. Yeah. He said you need to start with -- he said
3 you need these, these figures, in the LEAD program and
4 you need 4.8 people to serve this.

14:51:34 5 And the total cost of doing that starts off
6 at \$24,000.

7 We adjusted it for the present time.

8 Q. Well, is this 4.8 people or 4.8 LEAD programs?

9 A. Programs, excuse me.

14:51:50 10 Q. And what you're saying is you would need to know
11 the number of people being serviced to accurately assess
12 these costs?

13 A. Yes.

14 Q. And you didn't have that number, correct?

14:51:58 15 A. I didn't have that number.

16 Q. I want to take a look at another example.

17 And before we do, I'm going to be focusing
18 on Lake County because it's easier to just look at one.
19 But you did the same thing with Trumbull County, correct?

14:52:33 20 A. Yes.

21 Q. Dr. Alexander may --

22 A. Yes.

23 Q. -- have given you a different number of LEAD
24 programs were necessary, but you otherwise used the same
14:52:42 25 2015 --

1 A. Same methodology.

2 Q. -- methodology?

3 A. The numbers might be different because it's a
4 different geographic area, different economic area, but
14:52:57 5 the methodology is the same.

6 Q. Okay. Let's look at Page 130 of Exhibit P 23127.
7 That is 74 of your report, Dr. Burke. I have it up on
8 the screen.

9 It's Schedule 3B1 for the Opioid Drug
14:53:20 10 Court.

11 A. Yes.

12 Q. Okay. Are you there?

13 A. I am.

14 Q. So on this schedule, you provide the cost per
14:53:36 15 participant, excluding treatment costs.

16 Do you see that?

17 A. Yes.

18 Q. Of operating the Drug Court, correct?

19 A. Yes.

14:53:44 20 Q. And again, you did not ask the counties what it
21 actually costs them to operate their Drug Courts,
22 correct?

23 A. Correct.

24 Q. Instead, that cost comes from a December, 2005
14:53:57 25 University of Cincinnati article, correct?

1 A. Yes.

2 Q. And I have it highlighted here, right?

3 A. Yes.

4 Q. And we can take a look at that article in just a

14:54:08 5 minute, but if we turn to the next page, this is the

6 backup for your Schedule 3B1 for Lake County, correct?

7 A. Yes.

8 Q. And based on the schedule, it looks like you took a

9 2003 figure of \$5,770 -- I don't know if I said that

14:54:32 10 right --

11 A. Yes.

12 Q. \$5,777. So your initial input costs and then

13 brought it up to 2021, correct?

14 A. Yes.

14:54:41 15 Q. And when you brought it up to 2021, you got \$9,855,

16 correct?

17 A. Yes.

18 Q. And that's the input that we see here?

19 A. Yes.

14:54:51 20 Q. Correct?

21 Okay. So all starting from this 5,077

22 costs in 2003, right?

23 A. Yes.

24 Q. Now, again, you stated here your intent was to

14:55:07 25 exclude treatment costs in this figure, correct?

1 A. Yes. Excluding treatment. That's what it says in
2 that column there.

3 Q. And that's important because had you not excluded
4 treatment costs, you'd be double counting or more than
14:55:21 5 double counting the treatment provided to Drug Court
6 participants because those treatment costs are accounted
7 for in other ways in other places in your report,
8 correct?

9 A. Yes.

14:55:32 10 Q. So how certain are you that your figure excludes
11 treatment costs?

12 A. How what?

13 Q. How certain are you that your figure that you
14 provided here excludes treatment costs?

14:55:41 15 A. I am certain a hundred percent based on my
16 methodology.

17 I started off with a figure of 5
18 points -- \$5,777 in 2003. I then adjusted it, and I told
19 you how I adjusted it to get to that starting point in
14:56:01 20 2021.

21 I'm absolutely sure that's what I did, and
22 I'm absolutely sure that's what those numbers would
23 verify.

24 Q. Okay. But --

14:56:12 25 A. But I didn't do the study that came up with the

1 \$5,777.

2 Q. I understand that. So let's look -- let's take a
3 look at that study, that's Footnote 1. It's an
4 evaluation of Ohio's Drug Courts: A Cost Benefit Study,
14:56:33 5 University of Cincinnati, December, 2005.

6 And we've marked that as Defendants'
7 Exhibit MDL 14984.

8 Do you have a copy of that, Doctor?

9 A. I do. I was just given it.

14:56:46 10 Q. Absolutely.

11 Are you ready, Dr. Burke, for a question?

12 A. Yes.

13 Q. So I want to direct your attention to Page 4 of
14 this article, and it's Page 8 of the exhibit.

14:57:34 15 A. Page 4?

16 Q. Yeah. It will be Page 8 on the bottom left but
17 it's Page 4 of the article.

18 A. Yes.

19 Q. Do you have it up on the screen?

14:57:42 20 A. Yes.

21 Q. Okay. And under this section, "Comparability of
22 the Courts," I want to draw your attention to the
23 sentence that says -- if I can find it -- "Like Drug
24 Courts across the United States, the Courts in this study
14:58:06 25 provide community based treatment services, judicial

1 monitoring and frequent urinalysis."

2 Do you see that?

3 A. I do.

4 Q. Okay.

14:58:17 5 And if we turn to Page 13 of the article.

6 A. Say again. 13?

7 Q. 13.

8 A. Yes.

9 Q. You'll see sort of in the conclusion, "The marginal
14:58:33 10 costs per Drug Court case were estimated to be \$5,777."

11 Correct?

12 A. Yes.

13 Q. Nowhere does it say that it has excluded the
14 treatment costs that were present on the prior page,
14:58:49 15 correct?

16 A. It does not say that.

17 But it does say marginal cost.

18 Q. And what -- and what does -- why would marginal
19 cost mean drug treatment?

14:59:00 20 A. Definition of marginal cost is the added cost.

21 Q. All right. And --

22 A. The new cost, when you add on a person, where you
23 add on a product, or -- it's the added cost.

24 So it doesn't include any fixed cost,
14:59:15 25 doesn't include any cost from yesterday. It's the

1 marginal cost, the new cost you incur for doing
2 something.

14:59:33

3 Q. And so that would include the additional cost for
4 treating a person as part of their services through the
5 Drug Court, correct?

6 A. Yeah, but no fixed costs are in my -- by
7 definition, there's two types of costs; there's fixed and
8 there's variable.

14:59:47

9 Only variable is marginal. No fixed costs
10 are in that figure. So that assumes you've got a
11 building, you've got a Court, you've got staff, you've
12 got all these things. And what is the added cost of this
13 Court? Marginal cost for a Drug Court case was assumed
14 to be \$5,777.

15:00:03

15 Q. And that's the -- and that includes drug treatment
16 costs, correct? We looked at that on an earlier page.

17 A. Yes.

18 Q. And that's the figure that you used as your input
19 here?

15:00:17

20 A. Yes.

21 Q. \$5,777?

22 A. Yes.

23 Q. And ended up over here?

24 A. Yes.

15:00:21

25 Q. For 9,000?

1 A. Yes.

2 Q. So it actually should be that this is including
3 treatment cost, not excluding treatment cost, correct?

4 A. I've tried to exclude treatment cost.

15:00:32 5 That would be part of that element of the
6 other cost. That would not be the marginal cost.

7 Q. But we just established here when you're using that
8 \$5,777 cost, that includes treatment costs and that was
9 the basis here. So you have not excluded treatment
10 costs, correct?

11 A. I think the report says the marginal cost, which
12 means the additional costs.

13 So I've excluded the treatment cost. It's
14 the marginal cost per drug case, as it says.

15:01:19 15 Q. So just to be explicitly clear, since the earlier
16 page we looked at said that it included drug treatment
17 costs, correct, the Drug Courts across the United States
18 like the Courts in this study, provide community-based
19 treatment services?

15:01:33 20 A. Yes.

21 Q. Judicial monitoring and frequent urinalysis,
22 correct?

23 A. Yes.

24 MR. WEINBERGER: Your Honor, I'm sorry.

15:01:38 25 The quotation says nothing about costs that she just

1 referred to.

2 THE COURT: Well --

3 MR. WEINBERGER: Page 4.

4 MS. FUMERTON: It says the Courts provide
15:01:52 5 treatment services.

6 THE COURT: Well, I'll sustain the
7 objection to the question.

8 So why don't you pose another one.

9 BY MS. FUMERTON:

15:02:02 10 Q. Okay. Let me ask the question differently then.

11 Again, the costs that are being estimated
12 here, the Courts in this study provide community-based
13 treatment services, correct? Treatment services are
14 included here, correct?

15:02:15 15 A. That's what it says.

16 Q. Okay.

17 And when we go back to the marginal costs,
18 it determines it to be \$5,777. And nowhere here does it
19 say that they're excluding treatment costs, correct?

15:02:36 20 A. No, but it does say marginal.

21 Q. It does but it does not say it's excluding
22 treatment costs, correct?

23 A. Right, but it says marginal.

24 Q. It says marginal. I'm not debating that.

15:02:47 25 Can you say with certainty that this

1 excludes treatment costs?

2 A. Well, on Page 4, it says the Courts in this study
3 provide community-based treatment services, judicial
4 monitoring, and frequent urinalysis.

15:03:01 5 So they're doing all of that, but if they
6 do anything in addition, added costs, it's \$5,777.

7 Q. That's for the marginal costs per Drug Court --

8 A. Yeah.

9 Q. -- case, correct, compared to --

15:03:18 10 A. So you bring in a new case, a new case comes in off
11 the street, what's the marginal cost of dealing with that
12 case?

13 \$5,777.

14 Q. So you don't think that this study and the number
15:03:30 15 you're trying to figure out is the marginal cost of a
16 Drug Court case over a regular criminal court case?

17 A. Well, in that same line, they estimate a regular
18 case at costing less, but again, that's marginal cost.
19 That's not total cost. It's just the added cost, the new
15:03:49 20 cost.

21 Q. Dr. Burke, do you think the Courts in Trumbull
22 County understand what the costs are to run a Drug Court?

23 MR. WEINBERGER: Objection.

24 A. Sure.

15:04:04 25

1 BY MS. FUMERTON:

2 Q. And you never --

3 THE COURT: Overruled.

4 Q. -- did any investigation to try to find that cost,
15:04:10 5 did you?

6 A. I did not.

7 Q. So let's look at another cost.

8 Can you please turn to Page 134 of your
9 report?

15:04:51 10 A. Yes, ma'am.

11 Q. And this schedule provides --

12 A. Hold on a minute, please.

13 Q. Yes.

14 A. Okay. 134 of my report.

15:05:19 15 Q. And I'm going by the number, the Bates stamp number
16 of Exhibit P 23127. So it's report Page 78.

17 A. When you said 134, are you --

18 Q. I know. I'm going to try to stop confusing you on
19 this.

15:05:33 20 So I'm looking at Page 78 of the report,
21 which is Page 134 of the exhibit. And specifically, it's
22 3B3, Transitional Housing For Newly Released.

23 A. Can you move that page up, please, so I can see the
24 bottom?

15:05:52 25 So it's Page 76.

1 MR. WEINBERGER: 78.

2 THE WITNESS: That's where you want me to
3 go.

4 MR. WEINBERGER: It's 78.

15:06:04 5 Q. Did I misspeak? I apologize if I misspoke.

6 A. I'm with you.

7 Q. Okay.

8 So on this Schedule 3B3, you are estimating
9 costs per person of transitional housing for individuals
15:06:38 10 newly released from incarceration, correct?

11 A. Yes.

12 Q. And you estimate \$10,711 per person?

13 A. Yes.

14 Q. Correct?

15:06:50 15 And if we turn to Page 83 of your report,
16 which is Prenatal and Post-Partum Housing Services, we'll
17 see you're estimating the same \$10,711 for housing
18 services per mother, correct?

19 A. Could you show me the bottom of that page, please?

15:07:19 20 Q. Absolutely.

21 A. 83.

22 Yes. And it's the same source.

23 Q. It's the same source.

24 So you have identified the housing costs
15:07:45 25 per person for housing services that are provided to new

1 mothers with OUD as the same as the housing costs for
2 individuals who need transitional housing
3 post-incarceration, correct?

4 A. Yes.

15:07:58 5 Q. And as you said, you used the same source.

6 And that source was not any investigation
7 of the actual cost of transitional housing in Lake and
8 Trumbull Counties, correct?

9 A. What do you mean by actual costs?

15:08:13 10 Q. Like, you didn't go to anybody in Lake or Trumbull
11 County --

12 A. No, I sourced where I got my information from, and
13 I got it from the Culhane Report.

14 Q. Right. And that's from May of 2007, correct?

15:08:27 15 A. Yes.

16 Q. Okay.

17 Can you please turn to the Bates Number 65,
18 but I appreciate you like the other one. So give me a
19 second and I'll get there. I'll give it to you.

15:08:57 20 So it's your report, Page 41. But it's
21 Exhibit Page 65 of P 23127.

22 Let me know when you're there.

23 A. Thank you.

24 Yes.

15:09:26 25 Q. Okay.

1 And this schedule estimates the costs of
2 outpatient treatment for individuals in Lake County with
3 OUD, correct?

4 A. Yes, as per the Alexander report.

15:09:38 5 Q. And there's a similar schedule that does the same
6 thing for Trumbull County, correct?

7 A. Yes.

8 Q. So again, the first column is year.

9 The next column lists the number of
15:09:53 10 individuals with OUD in Lake County that are estimated by
11 Dr. Alexander to receive outpatient OUD treatment in each
12 of those years, correct?

13 A. Yes.

14 Q. And the next column is average cost per day,
15:10:07 15 correct?

16 A. Yes.

17 Q. And the citation for that column again is
18 Dr. Alexander's report, correct?

19 A. Yes.

15:10:12 20 Q. And that's because Dr. Alexander provided the
21 average cost per month for outpatient treatment, correct?

22 A. Yes.

23 Q. And then you take that average cost per month,
24 multiply it by 12 to get the average cost per year, and
15:10:25 25 then divide by 365 to get the average cost per day,

1 correct?

2 A. Yes.

3 Q. And you didn't validate whether the average cost
4 per month that Dr. Alexander provided was accurate,
15:10:42 5 correct?

6 A. Say again.

7 Q. You did not validate whether the average cost per
8 month that Dr. Alexander provided was accurate, correct?

9 A. You're correct. I accepted what Dr. Alexander had.

15:10:51 10 Q. And you didn't check to see whether the average
11 cost per month that Dr. Alexander provided is consistent
12 with what the counties currently pay or have historically
13 paid for the same or similar treatment, correct?

14 MR. WEINBERGER: Objection.

15:11:01 15 THE COURT: Look, I'm not trying to try the
16 case.

17 Dr. Burke has said that he didn't go
18 behind -- if Alexander gave him a figure, he used it. He
19 didn't go behind it. He didn't talk to anyone at Lake
15:11:13 20 County, he didn't talk to anyone at Trumbull County for
21 anything he did.

22 Okay? I mean, I don't think we need to
23 keep doing this for every chart. He's going to be
24 consistent.

15:11:24 25 Is that right, Doctor?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. FUMERTON: Understood, Your Honor.

4 I'll move things along.

15:11:29 5 THE COURT: All right.

6 BY MS. FUMERTON:

7 Q. The next column reflects the number of days in the
8 year that are required for the treatment, correct?

9 A. Yes. And I see a mistake there. It should be
15:11:41 10 365.25.

11 Q. Okay.

12 A. A leap year happens.

13 Q. Putting aside the .25, but for each year of the
14 schedule, the number of days in a year required for
15:11:50 15 treatment that you estimated is for 365 days, right?

16 A. Yes.

17 Q. In other words, the entire year?

18 A. Yes.

19 Q. So for the year 2021, you're computing the cost for
15:12:02 20 388 people to receive treatment for the entire year,
21 correct?

22 A. I don't know if that's 388 people.

23 It may be a thousand people. It's just
24 that you need that number, that capacity, you need the
15:12:17 25 capacity to deal with 388 people but they may be

1 different people over the year, some for a month, some
2 for several months.

3 Q. And did you -- did you recall being asked this
4 question in your deposition a few months ago?

15:12:32 5 A. I do.

6 Q. And in that deposition, do you recall that you
7 referred to these as people?

8 A. Yes.

9 Q. Okay.

15:12:41 10 And so in your deposition, you stated that
11 you were computing the costs for these 388 people to
12 receive treatment for the entire year, correct?

13 A. And I misunderstood what Dr. Alexander was saying
14 with the 388, and he checked up on that.

15:12:55 15 Q. And how did you check up on that?

16 A. We went -- I went back to Mr. Weinberger and
17 checked with him, and he checked with the sources, and
18 they say Dr. Alexander says that's capacity, that's
19 potential, that's the number of slots you need available.

15:13:12 20 And it's not 388 people. It may be a
21 thousand people, each for three months or four months.

22 Q. And so --

23 A. And so I misunderstood what it was. So I gave you
24 a bad answer -- I mean I gave you an honest answer but I
15:13:27 25 gave you a bad answer in the deposition.

1 Q. And then Mr. Weinberger told you that answer was
2 wrong, and that you misunderstood Dr. Alexander?

3 A. Yes.

4 MR. WEINBERGER: I object to that, Your
15:13:37 5 Honor.

6 MS. FUMERTON: Well, Your Honor, it's
7 changing the testimony as to how he's calculating these
8 costs, and I think we get to understand how he --

9 THE COURT: It was incorrect. He gave an
15:13:45 10 incorrect answer of people. He meant -- now it's slots,
11 okay, so --

12 BY MS. FUMERTON:

13 Q. So you have no expert opinion, and your analysis
14 does not show how many people will actually be treated?

15:13:59 15 A. That's correct.

16 It's kind of like FTEs at a university or
17 college. You get some people who take a full load, you
18 get some people who are there for a semester, you get
19 some people who take just one course, but the university
15:14:12 20 adds up the full-time equivalence at the end of the year
21 and that's what they report.

22 That's what this is. It's a full-time
23 equivalent. It's a capacity figure. It's a potential.

24 Q. So this could be, as you said, a thousand people,
15:14:25 25 right?

1 A. Could be a thousand. I don't know how many it is.

2 But Dr. Alexander said that's the number of
3 slots you need available for people with these problems.

4 Q. So when you were asked this question at your
15:14:37 5 deposition with respect to multiple schedules, correct,
6 where you had inputted 365 days?

7 A. Yes.

8 Q. And so if we turn the page, for example, Schedule
9 2B2 for intensive outpatient treatment, you've
15:14:52 10 essentially done the same thing?

11 A. The same would apply.

12 Q. You just misunderstood what Dr. Alexander was
13 proposing, correct?

14 A. Yes.

15:14:59 15 Q. So again, where it says number in intensive
16 outpatient treatment, you actually aren't opining and
17 you're not putting an input here as to how many
18 individuals will receive treatment?

19 A. No.

15:15:09 20 Q. That's --

21 A. It's the number of slots that Dr. Alexander has.

22 Q. Understood. And it's otherwise unknown as to how
23 many people will be --

24 A. I don't know how many people. I don't think
15:15:22 25 Dr. Alexander knows how many people either. He just

1 knows how many you have to have available for.

2 Q. And that would be true for Trumbull County as well,
3 correct?

4 A. True.

15:15:45 5 Q. And not just for services but you did the same
6 365-day calculation with respect to drug treatment as
7 well, correct?

8 A. Yes.

9 Q. And that was the same error that you had made or
15:15:52 10 misunderstanding you had in your prior deposition,
11 correct?

12 A. Yes.

13 Q. Okay. Let's move on to a different component of
14 the abatement plan.

15:16:05 15 Can you please turn to Page 29 of your
16 report, Page 165 of the exhibit?

17 A. Yes.

18 Q. Again, you have the year of the abatement and the
19 next column reflects the number of children that are
15:17:03 20 estimated to be in foster care, due to parental opioid
21 use, correct?

22 A. Yes.

23 Q. And that number's coming from Dr. Alexander?

24 A. Yes.

15:17:14 25 Q. And then there's a cost of -- for foster care, cost

1 per child, correct?

2 A. Yes.

3 Q. And those costs do not come from Dr. Alexander,
4 correct?

15:17:25 5 A. That's correct.

6 Q. Instead, they come from the document that's cited?

7 A. Yes.

8 Q. And we can go look at the detail if we need to, but
9 basically, you took that source and you took the per day
10 daily rates and converted them to be annual rates that
11 are reflected on the next page, correct?

12 A. Yes.

13 Q. And Dr. Alexander, in his report, does not specify
14 how long the children reflected in these schedules will
15 be in foster care, does he?

16 A. You're correct.

17 Again, that's one of those capacity things.

18 There may be some children for three months, some
19 children for nine months, some children for a week. But
15:18:06 20 Alexander says you need that capacity, you need that
21 potential, you need that available.

22 Q. And so I think in your prior deposition, again, you
23 had testified that those were the actual number of
24 individual children?

15:18:19 25 A. Yes. And I was --

1 Q. But you misunderstood?

2 A. I misunderstood.

3 Q. But your calculations then would assume that there
4 are 39 children for an entire year or more than 39
15:18:32 5 children occupying space for an entire year, and that
6 would be the cost for those children, correct?

7 A. Yes.

8 Q. And to be clear, you don't know what the average
9 length of stay in foster care is for children, correct?

15:18:47 10 A. I do not.

11 Q. Can you please turn to Page -- let's see -- 25 of
12 your report? It's Page 34 of the exhibit. It's Schedule
13 1E2a.

14 A. Yes.

15:19:57 15 Q. And because in this instance, unlike the prior one
16 we were looking at with the LEAD programs, these 8.8
17 machines are going to be the total over the 15-year
18 period, correct?

19 A. Yes.

15:20:08 20 Q. So there are no other costs?

21 A. It's a one-time cost.

22 Q. And you have a one-time cost of acquiring those
23 machines is \$181,000, correct?

24 A. Yes.

15:20:24 25 Q. And if we turn to the next page, so it's two pages,

1 but Page 26 of your report, Page 36 of the exhibit, this
2 is the page Schedule 1E2b, that estimates the recurring
3 cost of the 8.8 drug checking machines in Lake County for
4 15 years, correct?

15:20:48

5 A. Yes.

6 Q. And do you know what a drug-checking machine is?

7 A. Not really.

8 Q. And here you estimated the number of technicians
9 needed to perform the recurring maintenance on the drug
10 checking machines, correct?

15:21:01

11 A. Yes. Dr. Alexander said you need one.

12 Q. And though -- you estimate the cost of one
13 technician for the 8.8 machines over a 15-year period and
14 come up with \$1.3 million total cost, correct?

15:21:18

15 A. Yes.

16 Q. And that's assuming that this individual's sole job
17 is to check those 8.8 machines, correct?

18 A. Assuming what?

19 Q. That this individual's job, sole job, over those 15
20 years is to check those 8.8 machines, correct?

15:21:35

21 A. Yes.

22 You need one person.

23 Q. And that's at a cost to Lake County of \$1.3
24 million, correct?

15:21:48

25 A. Yes.

1 Q. Based on your estimates?

2 MR. WEINBERGER: So the record is correct,
3 you're talking about over a 15-year period of time.

4 MS. FUMERTON: I apologize if I said
15:22:10 5 something other than that but I was not intending
6 anything other than 15 years.

7 MR. WEINBERGER: Okay.

8 BY MS. FUMERTON:

9 Q. And you do the same thing for Trumbull County. I
15:22:26 10 think there were nine machines but you essentially said
11 for those nine machines it was a one-time cost, and
12 you'll hire a technician to service them for the
13 entire -- for the 15 years, correct?

14 A. Yes.

15:22:39 15 Q. And in Lake -- I'm sorry -- in Trumbull County --
16 why don't we look at it just to make sure it's clear. So
17 if we go to Page 113 of your report.

18 A. 113, yes.

19 Q. 203 of the exhibit.

15:23:26 20 This is showing the nine drug checking
21 machines at a cost of \$186,000.

22 A. Hold on a minute, please.

23 113.

24 Yes.

15:23:42 25 Q. Okay.

1 And if you turn to the next page, that's
2 Page 114 of the report, 205, you can see that for the
3 cost of the technician for Trumbull County, you were
4 estimating a total cost of \$1.16 million over 15 years,
15:24:00 5 correct?

6 A. Yes.

7 Q. So if you add them both together, you're basically
8 talking \$2.1 million, Lake and Trumbull Counties for two
9 technicians over a 15-year period to track -- to check
15:24:18 10 drug checking machines, correct?

11 A. Yes.

12 If you start off with this page, you have
13 to pay around \$60,000 a year plus fringe benefits for 15
14 years, that's what it comes out to be.

15:24:37 15 Q. Let's switch to Page 38 of your report, which is
16 Page 55 of the exhibit.

17 A. Page 35?

18 Q. 36. It's 55 of the exhibit. 36 of your report.

19 A. Yes.

15:25:05 20 Q. And this is Schedule 2A3, which is estimating
21 transportation assistance for individuals receiving OUD
22 treatment in Lake County, correct?

23 A. Yes.

24 Q. And again, these are numbers that you got from
15:25:25 25 Dr. Alexander, right?

1 A. Yes.

2 Q. When you were estimating the figures on this page,
3 did you do any investigation to understand what
4 percentage of individuals receiving OUD treatment in the
15:25:42 5 counties would actually need the transportation
6 assistance?

7 A. I did not.

8 I thought they would be the numbers that
9 Dr. Alexander has, and he -- that's not the number of
15:25:52 10 people. That's the number of vouchers needed.

11 Q. And to the extent that this schedule would indicate
12 that every single person receiving outpatient OUD
13 treatment in Lake and Trumbull County would need
14 transportation assistance to get there, you don't have an
15:26:11 15 opinion one way or the other as to whether that's
16 appropriate, correct?

17 A. I do not have an opinion on that. You're right.

18 Q. I just want to talk high level at some of the other
19 costs just to make sure I understand what you're
15:26:25 20 estimating.

21 A. Say again, please.

22 Q. Sorry. I was just transitioning us. I want to
23 talk about some other specific costs at a very high
24 level?

15:26:34 25 THE COURT: If you're going into another

1 subject, Ms. Fumerton, it might be a good time for a
2 break.

3 MS. FUMERTON: Yes, Your Honor. I
4 apologize.

15:26:40 5 THE COURT: No. No problem.

6 I didn't want to cut you off.

7 So we'll take a 15-minute break and then
8 we'll hopefully conclude with the Doctor's testimony.

9 MS. FUMERTON: Thank you, Your Honor.

15:26:49 10 (Recess taken.)

11 THE COURT: Okay. Please be seated.

12 And, Doctor, I just want to remind you
13 you're still under oath from before the break.

14 THE WITNESS: Yes, Your Honor.

15:56:08 15 THE COURT: Okay.

16 BY MS. FUMERTON:

17 Q. Dr. Burke, during the break, I was able to direct
18 you to the next page I'm going to ask you about, which is
19 Page 17 of your report, which is Page 18 of the exhibit.

15:56:25 20 And that's Schedule 1A2.

21 Do you have that in front of you?

22 A. I do.

23 Q. Okay. And I'm going to try to get us all out of
24 here in short order, but just have a few questions about
15:56:38 25 some specific schedules to make sure I understand what it

1 is that you're estimating.

2 Okay?

3 So the Schedule 1A2 is estimating the cost
4 to Lake County for paying doctors and other health
15:56:57 5 professionals to attend continuing medical education.

6 Is that correct?

7 A. Yes.

8 Q. Okay. And for 15 years, you have estimated a total
9 cost of a little over three million, correct?

15:57:15 10 A. Yes.

11 Q. And you did the same thing for Trumbull County?

12 A. Yes.

13 Q. And that's on Page -- this page -- Page 105 of your
14 report, which is Page 187, and here you've estimated that
15:57:36 15 same cost of paying doctors to attend continuing medical
16 education of a little over one -- or about \$1.5 million.

17 Is that right?

18 A. Yes.

19 Q. So if you add the 15-year cost for Lake and
15:57:54 20 Trumbull together, you're getting over \$4 million that
21 Dr. Alexander's abatement plan is proposing for the
22 counties to pay doctors to attend continuing medical
23 education, correct?

24 A. That's the cost of Alexander's plan, yes.

15:58:07 25 Q. Can you turn to Page 24 of your report, which is,

1 for the record, Page 32 of Exhibit P 23127?

2 A. Yes.

3 Q. And this Schedule 1E1 estimates the cost for Lake
4 County to provide, in fact, heroin users with access to
15:58:59 5 syringes, correct?

6 A. Yes.

7 Q. And you estimate the cost for Lake County to do so
8 for 15 years would be a little over 7 -- or about \$7.4
9 million, correct?

15:59:12 10 A. Almost seven-and-a-half million, yes.

11 Q. And you did the same for Trumbull County, and
12 that's on Page 112 of your report, which is Page 201 of
13 this exhibit.

14 A. Yes.

15:59:35 15 Q. And the total for Trumbull County of
16 Dr. Alexander's proposal for the counties to pay for
17 heroin users to have the access to syringes is, again,
18 over -- a little bit over \$7.5 million, correct?

19 A. Yes.

15:59:52 20 Q. So for both Lake and Trumbull County, that's about
21 \$15 million?

22 A. Yes.

23 Q. If you'd turn to Page -- Page 27 of your report,
24 which is Page 38 of this exhibit, and I'd ask you some
16:00:27 25 basic questions. So if you just want to look on the

1 screen, that's fine, or you're welcome to have the hard
2 copy in front of you.

3 A. I have the hard copy.

4 Q. Okay.

16:00:35 5 A. I have the screen, too. Thank you.

6 Q. And so this is Schedule 1E3, and this is
7 effectively estimating a cost for providing users of
8 illicit drugs with test strips to test those illicit
9 drugs before they take them to see if they have Fentanyl,
16:00:53 10 correct?

11 A. Yes.

12 Q. And you estimate, and under Dr. Alexander's
13 abatement plan, that for Lake County, the total cost
14 would be about \$3.2 million of doing so, correct?

16:01:06 15 A. Yes.

16 Q. And then you do the same for Trumbull County. And
17 for Trumbull County, that's shown on Page 115 of your
18 report, which is Page 207 of this exhibit.

19 And here you're estimating the cost to
16:01:29 20 Trumbull County of about \$3.4 million for illicit users
21 of drugs to test whether or not those drugs have
22 Fentanyl, correct?

23 A. Yes.

24 Q. And so if you combine the 3.4 with the earlier
16:01:45 25 number, you're getting over -- over \$6 million, is that

1 right?

2 A. Yes.

3 Q. And that's for Dr. Alexander's plan to -- the cost
4 of Dr. Alexander's -- let me start over.

16:02:00 5 That's for the cost.

6 A. That's the cost of that part of this plan, yes.

7 Q. Thank you.

8 Can I direct your attention to Page 55 of

9 your report, which is Page 93 of this exhibit, and I

16:02:34 10 really want to talk about these schedules altogether. So

11 I want to sort of flip through them once you get there.

12 I want to talk about Schedules 2C, which

13 deal with managing and treating HIV, HCV, and

14 endocarditis.

16:03:07 15 Are you there?

16 A. I'm on Page 55, yes.

17 Q. Okay. So Page 55 has an estimated cost for Lake
18 County of HCV and HIV screening, correct?

19 A. Yes.

16:03:23 20 Q. Page 56 has HCV treatment, correct?

21 A. Yes.

22 Q. And it's a large sum of almost 50 million for the
23 15 years to treat?

24 A. What -- what page is that, please?

16:03:37 25 Q. It's Page 56 of your report, Page 95 of this

1 exhibit.

2 A. Yes.

3 Q. And then the next page, Page 57, which is Exhibit
4 Page 97, if you can see the page number, this is
16:03:54 5 treatment of HIV, and that's over \$10 million for 15
6 years, correct?

7 A. Yes.

8 A lot of money.

9 Q. And, in fact, be happy to look at the report, but
16:04:06 10 if you go to 2C and you add up all the different costs
11 that Dr. Alexander's plan is proposing for the treatment
12 of these other diseases --

13 MR. WEINBERGER: Well, these are
14 applications.

16:04:24 15 THE COURT: These are other -- these are
16 other diseases that people with Opioid Use Disorder have.
17 BY MS. FUMERTON:

18 Q. Well -- and let's be clear because I want to
19 understand what we're looking at.

16:04:34 20 THE COURT: This isn't everyone in Trumbull
21 or Lake County with HIV or the heart infection.

22 MS. FUMERTON: That's absolutely fair, Your
23 Honor, and I wasn't trying to suggest anything else.

24 This would be people who have these
16:04:48 25 diseases and also have OUD, correct?

1 THE COURT: And probably got it because as
2 a result of taking the drugs.

3 MS. FUMERTON: Well, respectfully, Your
4 Honor, I don't know that there's testimony that suggests
16:04:57 5 that, but you were not attempting in your estimate to
6 determine whether or not the individuals who --

7 THE COURT: Well, to be fair, everyone
8 knows that you can get certain infectious diseases and
9 heart infections from illegal drugs that you're
16:05:14 10 injecting.

11 So I think that's a corollary.

12 MS. FUMERTON: Yes, Your Honor.

13 Let's make sure that the record is clear on
14 this front since you raised this point.

16:05:22 15 BY MS. FUMERTON:

16 Q. And I'm not trying to suggest that these treatment
17 for people that do not also have OUD.

18 But in estimating these costs, which if you
19 total them all up for both counties, you get almost \$200
16:05:35 20 million for treating and services related to individuals
21 with these additional diseases.

22 You did not make any effort to determine
23 whether those individuals received those diseases as a
24 result of their OUD, correct?

16:05:51 25 A. Correct.

1 Q. And so the costs would include individuals who have
2 those diseases and had them before they had OUD, correct?

3 A. It could, yes.

4 Q. Could you please turn to Page -- I need
16:06:25 5 glasses -- Page 62 of your report, which is Page 107 of
6 this exhibit?

7 I just want to make sure I understand what
8 this schedule is estimating.

9 A. Yes.

16:06:43 10 Q. So on Schedule 2D4, pain treatment specialists,
11 essentially what you are doing is estimating the cost to
12 hire seven pain doctors to treat -- let me ask that
13 question again.

14 You're trying to estimate the cost of
16:07:01 15 hiring seven pain treatment specialists to treat pain,
16 correct?

17 A. Yes.

18 Q. And for Lake County, you're estimating a 15-year
19 cost of almost 25 million, correct?

16:07:17 20 A. Yes.

21 Q. And if we look at the Trumbull costs to hire pain
22 treatment specialists, that's on Page 150 of your report,
23 which is Page 276 of this exhibit, and for Trumbull
24 County, Dr. Alexander estimates hiring six pain treatment
16:07:58 25 specialists at a cost to Lake County -- I'm sorry -- of

1 Trumbull County of over \$16 million for a 15-year period,
2 correct?

3 A. That's the cost of hiring those people.

4 I don't know if it's to Trumbull County or
16:08:16 5 not, but that's the cost of hiring those people, whoever
6 hires them.

7 Q. And that's what I want to understand, too.

8 When you were estimating costs here, you're
9 not estimating the cost that would be paid by Lake or
16:08:29 10 Trumbull County; they could be paid by Medicaid, for
11 example?

12 MR. WEINBERGER: Objection.

13 A. Well, you're absolutely right. I'm looking at the
14 cost of the plan, not who pays for it.

16:08:43 15 Catholic Charities, United Jewish Appeal,
16 next door neighbor, you win the lottery. Lots of ways
17 you could pay for it. I'm looking at the cost of it.

18 BY MS. FUMERTON:

19 Q. Right.

16:08:55 20 And so you didn't make any effort to try to
21 subtract from these costs noncounty costs; in other
22 words, costs that would be paid by other entities?

23 THE COURT: Hold it. Hold it.

24 Ms. Fumerton, all Dr. Burke did was take
16:09:07 25 the plan that the other doctor did and he costed it out.

1 That's it.

2 He didn't -- he wasn't asked to say who
3 would pay for it or how it would be paid for, if it would
4 be paid. Just how much it cost.

16:09:22 5 MS. FUMERTON: Well, and, Your Honor, if it
6 was already clear to everybody and in the record before,
7 I apologize for raising it again, but I want to make
8 sure, given the assignment in this case, that it was
9 clear that --

16:09:31 10 THE COURT: It's clear to me. Okay?

11 MS. FUMERTON: Okay.

12 THE COURT: So I'm saying it's clear.

13 That's all this doctor did. He costed out
14 the other plan.

16:09:38 15 He's not -- he wasn't asked to figure out
16 who would pay for it or if it would be ever paid for.

17 Some of it's being paid for now.

18 MS. FUMERTON: Thank you, Your Honor.

19 And so just to tie that off --

16:09:51 20 THE COURT: That's my job.

21 BY MS. FUMERTON:

22 Q. I think it's very clear, I think probably based on
23 what Judge Polster just said, but so these are estimating
24 costs; not necessarily costs to the county, correct?

16:10:04 25 A. I don't know whose costs they are.

1 They're just the cost of providing this
2 plan.

3 Q. I want to touch on one other part of your report.

4 So in addition to relying on certain cost
16:10:54 5 inputs that were set forth by Dr. Alexander, and some
6 that you came up with, you testified that you relied on
7 certain cost inputs from Dr. Nancy Young, correct?

8 A. From doctor?

9 Q. Nancy Young.

16:11:07 10 A. Yes.

11 Q. And like with respect to Nancy, Dr. Young, you did
12 not take any attempt to -- I'm sorry -- like with respect
13 to Dr. Alexander with the cost inputs you got from
14 Dr. Young, you did not do any independent assessment as
16:11:23 15 to whether or not those costs were accurate, correct?

16 A. You are correct.

17 Q. And you didn't do anything else to otherwise
18 validate those costs, right?

19 A. No. I accepted them.

16:11:38 20 Q. Do you know that Dr. Young testified yesterday?

21 A. No.

22 Q. Would it surprise you to learn that yesterday,
23 Dr. Young testified in this courtroom that she was not
24 offering any opinions or estimates in this case about the
16:11:53 25 costs of the various programs or interventions that she

1 recommends?

2 A. No, that wouldn't surprise me or it would not not
3 surprise me.

4 Whatever she testified to, she testified
16:12:07 5 to.

6 Q. If Dr. Young was not -- if Dr. Young's testimony
7 yesterday was accurate that she was not providing any
8 cost estimates, do you know the source of the cost
9 estimates that you received from Dr. Young?

16:12:31 10 A. Do I know what?

11 Q. What the source is.

12 A. For Young's report? No, I do not.

13 I have Young's report. I could look at her
14 bibliography and see what the sources are, but I don't
16:12:42 15 know them from memory.

16 Q. And do you understand that was a report from West
17 Virginia?

18 A. Yes. West Virginia.

19 Q. And so you didn't look at any reports specific to
16:12:52 20 Lake and Trumbull that Dr. Young issued in this case,
21 correct?

22 A. Correct.

23 Q. And the figures in Dr. Young's West Virginia report
24 were often specific to West Virginia, correct?

16:13:00 25 A. They were for West Virginia, yes.

1 Q. And I think you touched on this before, but you're
2 familiar with the concept of sort of the cost benefit
3 analysis, talked about marginal cost, right?

4 A. Those are two different concepts.

16:13:19 5 Q. Fair enough.

6 A. But I'm familiar with both of them.

7 Q. Fair enough.

8 Let's talk about the cost benefit.

9 In your analysis, you looked at the cost of
16:13:28 10 the various elements of Dr. Alexander's abatement plan
11 but you did not apply any offsets to the extent there
12 would be a benefit to another portion of the counties'
13 programs, correct?

14 A. Oh, no, I think I did.

16:13:42 15 Q. And in what way are you -- do you think that you
16 provided offsets?

17 A. It's my understanding that Dr. Alexander's plan is
18 the cost of remediation, and if you follow through with
19 his plan, you'll be through with this problem.

16:13:57 20 There's the benefit.

21 Q. So you applied Dr. Alexander's plan as it was
22 written.

23 You did not undertake any additional
24 efforts to determine whether there would be any offset or
16:14:07 25 benefit to the counties, correct?

1 A. No, I assumed there would be a benefit.

2 The benefit is you would remediate this
3 problem. That's the benefit.

4 Q. But you did not, in your cost estimates, subtract
16:14:20 5 any costs that the county might no longer incur, due to
6 the programs that had a benefit unrelated to Opioid Use
7 Disorder, correct?

8 A. No, you're correct. That was not in Alexander's
9 report. It was not in mine.

16:14:40 10 MS. FUMERTON: Thank you for your time
11 today, Dr. Burke.

12 I'm passing the witness.

13 THE WITNESS: Yes, ma'am. You're welcome.

14 CROSS-EXAMINATION OF JOHN F. BURKE

16:14:58 15 BY MR. HYNES:

16 Q. Hello, Dr. Burke.

17 A. Good afternoon.

18 Q. My name is Paul Hynes. I represent CVS. We met
19 during your deposition a few months ago.

16:15:43 20 Good to see you. And I think I speak for
21 all of us when I say please give our best to
22 Dr. Burke -- or, sorry, Dr. Rosen. I always get you guys
23 confused.

24 A. We're interchangeable.

16:15:56 25 Q. I know.

1 A. We're the Irish/Jews of Cleveland. We go back and
2 forth.

3 Q. Okay. Well, please give our best to him, and we
4 hope he recovers.

16:15:58 5 A. I'll pass that kind word on. Thank you.

6 Q. I just have a few questions. This won't take much
7 time.

8 And just I want to, I think, clarify my
9 understanding of some of your testimony that you just
16:16:06 10 gave in response to Ms. Fumerton's questions.

11 And first, I want to talk about the slots.

12 Do you recall that testimony?

13 A. Do you want talk about what?

14 Q. You testified that your cost estimates for
16:16:21 15 treatment are based on having slots available for the
16 entire year.

17 Do you recall that --

18 A. Yes.

19 Q. -- testimony?

16:16:29 20 A. Yes.

21 Q. Okay.

22 A. As per Alexander said.

23 Q. Exactly.

24 And you clarified that from your deposition
16:16:36 25 back in February?

1 A. Yes.

2 Q. Okay.

3 I think it's best or easiest if we look at
4 an example. So I'm going to look at Schedule 2B in your
16:16:49 5 report.

6 I believe this is Lake County. It's
7 Page 77. And I'll put it on the screen if that's easier
8 for you.

9 MR. WEINBERGER: Can you move the page
16:17:11 10 down?

11 BY MR. HYNES:

12 Q. Sorry. It's 47 of 232, Pete, and the Bates number
13 is 77.

14 A. Can you show me the bottom of that page, please?

16:17:23 15 MR. WEINBERGER: 47 on your report.
16 Page 47.

17 MR. HYNES: And it's Schedule 2B7. And you
18 know what? I'm sorry. I started with the wrong one. I
19 apologize.

16:17:36 20 Talk about wasted effort.

21 BY MR. HYNES:

22 Q. Let's go to Page 42. So just back five pages.

23 A. 42?

24 Q. Yep.

16:17:57 25 A. Yes.

1 Q. Okay. I'm going to push it down so we can see it.

2 This schedule shows the estimated -- your
3 estimated costs for intensive outpatient treatment,
4 correct?

16:18:09 5 A. Yes.

6 Q. Okay. The second column, this one, from the left
7 shows the number in intensive outpatient treatment,
8 correct?

9 A. Yes.

16:18:24 10 Q. Okay.

11 And you clarified about an hour ago those
12 are slots that are to be available on a year-round basis
13 and not unique individuals?

14 A. That's my understanding.

16:18:35 15 Q. Okay.

16 And to calculate your estimated costs, you
17 took the slots, let's just take 2022, 181, you multiplied
18 that by the average cost per day, \$155.96, and you
19 multiply it by 365 days per year. Maybe it should have
16:19:00 20 been 365.25 as you said.

21 And then you did the inflation adjustment
22 but that's how you calculated that overall cost for that
23 year. Is that correct?

24 A. Yes.

16:19:08 25 Q. Okay.

1 Now, if in that year, only 100 and -- if in
2 that year, a slot, let's say 10 of those slots are not
3 used on a particular day, there's no cost in that day for
4 that slot?

16:19:33 5 A. Perhaps.

6 Q. Perhaps?

7 A. It all depends on what -- what Dr. Alexander says
8 is needed in that area.

9 Is that a bed? Is that a facility? Is
16:19:48 10 that transportation? Whatever -- if it's needed, it's
11 needed. You may not use it, but if it's needed you've
12 got to have it on hand.

13 Q. Okay. And if it's not something that's being used
14 on a particular day --

16:20:01 15 A. Yeah.

16 And also if it's an average, as you know
17 with any average, there's some numbers above, some
18 numbers below.

19 So today, you don't -- you have 10 empty
16:20:11 20 slots. Tomorrow, you've got 10 additional slots that
21 you've got nothing to do with.

22 Q. Okay. Maybe we could take it to a higher level.

23 If a slot isn't used for a week --

24 A. Ever.

16:20:25 25 Q. If it isn't -- better.

1 If one slot isn't used for the entire year,
2 it's likely the cost would be lower than what you've
3 projected here?

4 A. Yes.

16:20:37 5 And if one slot is not needed forever, then
6 I don't think Alexander would have had 181 there. He
7 would have had 180.

8 Q. Well, he's giving you an estimate or a target, so
9 it's possible that the number of slots needed ends up
16:20:50 10 being lower.

11 Fair?

12 A. Yes, but you should ask Alexander that question.

13 Q. Okay. Let's now go to Page 47. And that's Page 77
14 on the bottom right.

16:21:17 15 A. Yes, I'm there.

16 Q. This is Naltrexone. I assume you're not familiar
17 with Naltrexone?

18 A. I am not.

19 Q. Okay.

16:21:24 20 A. I was a hospital corps man in the United States
21 Navy, a pharmacist's mate, but that was about 60 years
22 ago.

23 Q. Okay. Well, it's a medicine. Okay?

24 A. Yes.

16:21:35 25 Q. It's a pill.

1 And would you agree, Dr. Burke, that if
2 medicine is not needed in a particular week, then there
3 would be no cost for that medicine?

16:21:53

4 A. No, I don't agree. If it's a capacity, if you have
5 to have it on hand, then you have to have it on hand.

6 If you don't use it, I don't know how long
7 these medicines last. Do they have a life, do they have
8 a shelf life? But Dr. Caleb Alexander called for this
9 number of -- and that's the number he used.

16:22:11

10 Q. Well, if you take your example and you have it on
11 hand and you don't use it, then that probably means you
12 have to buy less in the future?

16:22:31

13 A. Well, I think if that's the case, you should have
14 gotten Alexander to agree to a different number; not me,
15 because I don't know the number.

16 Q. I understand.

17 A. I relied on Alexander for the number.

18 Q. And I'm not trying to get you to agree to a
19 different number.

16:22:39

20 I am trying to understand if a slot is not
21 used, will there be a cost incurred for that slot?

22 A. If you have to have it available, I think there
23 would be a cost.

16:22:55

24 THE COURT: Well, this is not a fair
25 question to Dr. Burke.

1 All right?

2 He took what Alexander said and he put
3 it -- he did the math.

4 So and, quite frankly, the answer to that
16:23:09 5 question is quite complicated, and you need -- you'd need
6 someone from the county. If you want to call someone
7 from the county, you know, you'd probably get a good
8 answer to that question.

9 I don't know what the answer would be.

16:23:20 10 MR. HYNES: Okay. Thank you, Dr. Burke.

11 THE WITNESS: You're welcome.

12 MS. HACKER: Nothing from Walgreens, Your
13 Honor.

14 REDIRECT EXAMINATION OF JOHN F. BURKE

16:23:35 15 BY MR. WEINBERGER:

16 Q. Dr. Burke, you were asked the question or the
17 statement was made to you, "You did not look at the
18 counties' budgets, expenditures, financial statements,
19 books, and records."

16:23:52 20 Do you remember that?

21 A. Yes.

22 Q. Did you use a -- despite that, did you use a
23 well-recognized methodology for estimating these future
24 costs?

16:24:00 25 A. Yes, I did.

1 Q. And is that a methodology that you have used in the
2 past?

3 A. Yes. I would estimate several thousand times.

4 Q. Is that a well -- do you know, is that a
16:24:14 5 well-recognized methodology used by economists like you
6 around the country?

7 A. Yes, it is.

8 Q. Okay.

9 You were asked about 1E2b, Page 26. You
16:24:28 10 don't have to look for it. I'm going to put it right up
11 on the screen.

12 You were asked the question, "Does this
13 estimate the number of technicians needed to perform
14 recurring maintenance?"

15 In fact, Dr. Burke, this is the cost of
16 laboratory technicians, correct?

17 A. Yes. That's what it says.

18 Q. The cost of providing a clinical laboratory
19 technician, correct?

16:24:52 20 A. Yes.

21 Q. You were asked about treating complications of OUD.

22 That's what you costed out. It was
23 complications that patients suffer from OUD; not HIV
24 without it, correct?

16:25:11 25 A. Correct.

1 Q. And so your Schedules 2C on Page 55, 2C2, HCV
2 treatment on 56, HIV treatment on 57, and endocarditis
3 treatment on Page 58 for Lake County costs out the cost
4 of treating those complications, correct?

16:25:49 5 A. Yes, sir.

6 Q. Same thing true with respect to Trumbull?

7 A. Yes, sir.

8 MR. WEINBERGER: Thank you, sir.

9 That's all I have.

16:25:58 10 THE COURT: Let's see if there's anything
11 on that.

12 Any recross from any of the defendants?

13 MS. FUMERTON: Not from Walmart, Your

14 Honor.

16:26:07 15 MR. HYNES: Not for CVS.

16 MS. HACKER: Nothing from Walgreens, Your

17 Honor.

18 THE COURT: Okay. Very good.

19 Thank you, Doctor. You may be excused.

16:26:16 20 Thank you for coming in here today.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: And say hello to the Judge for
23 me.

24 THE WITNESS: I will do that. Thank you.

16:26:24 25 MR. WEINBERGER: Watch your step there,

1 John.

2 (Witness excused.)

3 MR. LANIER: Your Honor, at this point in
4 time, the plaintiffs rest.

16:27:06 5 MR. WEINBERGER: We have to move --

6 MR. LANIER: Oh, after we move for
7 admission of exhibits.

8 THE COURT: Well, I think we pretty much
9 have taken care of them, but I guess we should --

16:27:16 10 MR. WEINBERGER: Well, we didn't with
11 respect to Dr. Young's exhibits, Your Honor.

12 THE COURT: All right. Well --

13 MR. WEINBERGER: I could give you the
14 numbers.

16:27:25 15 THE COURT: All right.

16 MR. WEINBERGER: Okay.

17 THE COURT: I think we had P 23128.

18 MR. WEINBERGER: Correct. That's her
19 report.

16:27:34 20 THE COURT: All right. Is there an
21 objection?

22 I mean, again, none of these expert reports
23 are being admitted for the truth of what's contained in
24 them.

16:27:43 25 They're being admitted for what they say.

1 They're the testimony and work product of these
2 particular experts. They're -- so that's, that's why,
3 what I'm considering them for.

4 So but if there's any objection beyond
16:28:01 5 that, I guess they should be put on the record.

6 MR. DELINSKY: Your Honor, we do object to
7 the admission of the expert reports as stated in the
8 submission we made.

9 I think what, if my memory serves me right,
16:28:14 10 Your Honor, what has been admitted to date have either
11 been selected excerpts or charts or, for lack of a better
12 word, work papers.

13 THE COURT: A portion, there should be a
14 portion, what -- I think we should admit the portions of
16:28:39 15 it that she testified to or that, I don't know, the
16 summary charts.

17 I can't recall specifically.

18 MR. WEINBERGER: She referred to a couple
19 of charts in her report, Your Honor.

16:28:49 20 THE COURT: Those charts should be
21 admitted.

22 MR. WEINBERGER: Okay.

23 THE COURT: Any objection to any chart that
24 she referred to?

16:28:56 25 MR. WEINBERGER: We can look at the slides.

1 The slides come right from the report.

2 There were some graphs and other charts.

3 THE COURT: Let me just look at -- I

4 actually have them, I think.

16:29:12 5 All right. Well, I mean, I'm not -- she

6 didn't have any mathematical computations or summaries

7 like the other experts, so I'm not sure.

8 I mean, I've got -- I've got my copy of the

9 slides that you used, Mr. Weinberger, and I'm looking.

16:29:49 10 MR. WEINBERGER: Table 2 from her chart --

11 from her report.

12 THE COURT: All right. What --

13 MR. WEINBERGER: Which is Slide 14.

14 THE COURT: All right. Let's look at that.

16:30:13 15 Well, any objection to Table 2? Again,

16 it's not admitted for the truth of it. She testified to

17 it, she relied on it, and I think it's used in, I think

18 Dr. Alexander may have used this, also.

19 So I'll admit -- I'll admit that page.

16:30:34 20 MS. HACKER: And just to be clear for the

21 record, Your Honor, I believe that's Plaintiffs' Exhibit

22 23128, Page 10, just Table 2 that appears on Page 10.

23 THE COURT: All right. Well, I don't have

24 the -- pregnant women with OUD effects.

16:30:56 25 All right. So Page 10.

1 MR. WEINBERGER: Okay.

2 The next one is Slide 15 and it's Graph 2.

3 Same page, Your Honor.

4 THE COURT: All right. Any objection to
16:31:17 5 this chart?

6 MS. HACKER: Walgreens has no objection to
7 charts themselves, your Honor.

8 THE COURT: Okay.

9 MS. HACKER: And just to be clear for the
16:31:23 10 record, I do not believe Dr. Alexander relied on these
11 numbers, but since Dr. Young did testify off these
12 charts, we have no objection to the charts themselves.

13 THE COURT: All right. Any chart that she
14 specifically testified to can come in.

16:31:35 15 So that's -- again, someone's going to have
16 to put the numbers in. I don't have them.

17 MR. WEINBERGER: Your Honor, we'll take the
18 slides --

19 THE COURT: All right.

16:31:42 20 MR. WEINBERGER: -- apply it to the report
21 and we'll get the page numbers for you.

22 THE COURT: All right.

23 The charts that she testified to.

24 MR. WEINBERGER: And P 27576 is her
16:31:57 25 addendum. We'll withdraw that. We didn't use any charts

1 with respect to that.

2 And her CV is P 23129.

3 THE COURT: All right. Well, her CV can
4 come in, again, as to -- it's her CV so.

16:32:16 5 Okay.

6 MS. HACKER: And, Your Honor, just if I may
7 for the record, P 23129, her CV appears at Pages 1
8 through 9.

9 Pages 10 through 19 are -- in Plaintiffs'
16:32:41 10 Exhibit 23129, Pages 1 through 9 are Dr. Young's CV.

11 Pages 10 through 19 are additional
12 appendices that she did not testify about, so we would
13 ask that it be limited to Pages 1 to 9.

14 THE COURT: All right. That's fine.

16:33:11 15 MR. WEINBERGER: I think that takes care of
16 it, Your Honor.

17 THE COURT: Okay. Fine.

18 MR. HALL: Your Honor, I just have, for the
19 record, with respect to Dr. Keyes' rebuttal report, we
16:33:20 20 had discussed that we did not object to the charts and
21 figures on -- from Pages 56 through 60 of Dr. Keyes'
22 report, but the rebuttal report doesn't have charts and
23 it has her opinions, two kinds; those she expressed on
24 the record, which are in the record, but it also includes
16:33:45 25 opinions that she did not testify to and I, therefore,

1 did not cross her on because I was not going to spend our
2 time on opinions that she didn't testify to.

3 So it's a fully -- it's a three-page text
4 narrative document, and we object to the admission of the
16:34:03 5 rebuttal report.

6 THE COURT: Maybe we don't need it.

7 She testified.

8 MR. WEINBERGER: We'll withdraw it, Your
9 Honor.

16:34:09 10 MR. HALL: Thank you.

11 THE COURT: Okay.

12 MS. HACKER: And just one additional
13 exhibit to take care of, Your Honor.

14 We offered, during the cross-examination of
16:34:19 15 Dr. Young, Walgreens MDL 5032.

16 THE COURT: Okay. Any objection to that?

17 MS. HACKER: Here.

18 MR. WEINBERGER: Oh, no objection.

19 THE COURT: Okay. All right. We've taken
16:34:50 20 care of exhibits so the plaintiffs have rested.

21 So we will pick up with the defense counsel
22 on Monday.

23 We'll start at 9:00 a.m. Monday. I have an
24 early appointment, so we'll start at 9:00.

16:35:04 25 I guess it would be helpful for the

1 plaintiffs if when the defendants know who you're going
2 to call, to let them know.

3 I think it's just courtesy so they'll be
4 prepared.

16:35:18 5 MR. HALL: Yes.

6 MR. LANIER: Special Master Cohen ordered
7 them to do so, Your Honor, and ordered us to do so. So
8 we've got a good list coming in and it will make it real
9 smooth.

16:35:27 10 THE COURT: Okay. Well, it may be changing
11 as a result of you not calling Ms. Caraway and
12 Ms. Fraser.

13 MR. HYNES: Your Honor, we have some
14 exhibits from Dr. Alexander's cross-examination. We can
16:35:46 15 do them now or we can do them on Monday.

16 THE COURT: Might as well do it now.

17 MR. HYNES: Okay.

18 We have the Hopkins document. It's CVS MDL
19 4997.

16:35:55 20 MR. WEINBERGER: No objection.

21 THE COURT: Okay.

22 MR. HYNES: Okay.

23 We have the Compton article then as CVS MDL
24 4992.

16:36:06 25 MR. WEINBERGER: We object to the article

1 coming into evidence.

2 THE COURT: Well, yeah, I mean, typically
3 these aren't -- I mean, the articles don't come in.

4 I mean, they're --

16:36:28 5 MR. HYNES: Dr. Alexander -- okay.

6 THE COURT: We had testimony, and the
7 testimony, of course, is admissible.

8 MR. HYNES: We'll mark it as a
9 demonstrative for identification purposes.

16:36:37 10 THE COURT: Right. Okay.

11 MR. HYNES: Okay.

12 THE COURT: Yeah, anything that
13 was -- anything that was shown the witness certainly is a
14 demonstrative exhibit.

16:36:45 15 MR. HYNES: Of course.

16 We have the Rhode Island technical appendix
17 that was his document from the Rhode Island case.

18 And that is -- oh, sorry. I screwed up.

19 That is Washington. The technical appendix
16:37:08 20 is CVS MDL -- no, okay. We'll mark these documents as
21 demonstratives.

22 THE COURT: All right. They're just
23 demonstratives. Okay.

24 MR. HYNES: Yeah.

16:37:23 25 THE COURT: Okay.

1 MR. HYNES: So that's all we have.

2 THE COURT: Okay, fine.

3 MR. HYNES: Thank you.

4 THE COURT: Okay.

16:37:31 5 So we'll start at 9:00 a.m. on Monday with
6 the defense case, and everyone's committed, we will wrap
7 this up sometime next week.

8 For the time today, I have 1.25 for the
9 plaintiffs, and collectively 3.5 hours for the defense.

16:37:51 10 So plaintiffs have a lot of time left. I
11 hope you're not going to --

12 MR. LANIER: Woo hoo!

13 THE COURT: -- use 20 hours for
14 cross-examination.

16:37:59 15 MR. LANIER: We won't, Your Honor. I
16 guarantee we will be giving you time back.

17 THE COURT: All right. I wouldn't think
18 so, Mark.

19 MR. DELINSKY: Your Honor, we are going to
16:38:12 20 invoke a constitutional estoppel.

21 THE COURT: If he goes into 20, well, he's
22 not going to. I don't think he will.

23 All right. Well, have a good weekend.

24 MR. WEINBERGER: We -- as to Dr. Burke,
16:38:20 25 obviously we already have exhibits offered.

1 THE COURT: Yes.

2 MR. WEINBERGER: The one thing that I
3 didn't offer was his CV.

4 THE COURT: All right. His CV can come in.

16:38:28 5 MR. LANIER: Thank you, Judge, for your
6 time this week.

7 THE COURT: Okay.

8 MR. DELINSKY: Judge, can we leave papers
9 on the desk?

16:38:45 10 THE COURT: Yeah, no one is going to be
11 using the courtroom. Don't leave anything of great
12 value.

13 (Proceedings concluded at 4:38 p.m.)

14 - - - -

15 C E R T I F I C A T E

16 I certify that the foregoing is a correct
17 transcript from the record of proceedings in the
18 above-entitled matter.

19

20

21

22 /s/Susan Trischan
23 /S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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